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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 134 (VSB)

5 CALVIN DARDEN, JR.,

6 Trial

7 Defendant.

8 -----x

9 New York, N.Y.
October 3, 2024
10 9:45 a.m.

11 Before:

12 HON. VERNON S. BRODERICK,

13 District Judge
14 -and Jury-

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 KEVIN MEAD

18 WILLIAM C. KINDER

BRANDON C. THOMPSON

Assistant United States Attorneys

19 DONALDSON CHILLIEST & MCDANIEL LLP

20 BY: XAVIER R. DONALDSON

-and-

21 ANTHONY RICCO

STEVEN LEGON

Attorneys for Defendant

22 Also Present:

23 Alexander Ross, Paralegal

Arjun Ahuja, Paralegal

24 Melissa Baccari, FBI Special Agent

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(Trial resumed; jury not present)

THE COURT: Is there anything we need to take up? The jury is here now. Slight delay for one of the jurors because of mass transportation. Anything we should take up before we start summation?

MR. THOMPSON: No, your Honor.

THE COURT: From the defense?

MR. DONALDSON: No, your Honor. Thank you.

THE COURT: All right. Let's get the jury.

MR. MEAD: Your Honor, just for the Court's reference, I think the summation will be a little bit shorter than we initially anticipated, more in the range of 45 minutes to an hour.

THE COURT: All right. So the main summation. All right. Thank you. Just one thing, I did receive the respective power points of the parties' and the one demonstrative from the government. I flipped through them. They are what they are, so thank you for that.

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Summation - Mr. Thompson

1 THE DEPUTY CLERK: All rise.

2 (Jury present)

3 THE COURT: You may be seated. Ladies and gentlemen,
4 I hope you had a relaxing evening. We're now going to have the
5 parties' summation beginning with the government. The
6 government summation.

7 MR. THOMPSON: Thank you, your Honor.

8 THE COURT: Thank you.

9 MR. THOMPSON: May I proceed.

10 THE COURT: You may.

11 MR. THOMPSON: In a few hours you'll be asked to
12 decide whether the evidence has shown that this man, Calvin
13 Darden, Jr., committed fraud and money laundering crimes. The
14 evidence that he committed these crimes is overwhelming. The
15 defendant and his co-conspirator conned two basketball players
16 Dwight Howard and Chandler Parsons into sending millions of
17 dollars into the bank account of a shell corporation from which
18 they received absolutely nothing in return. Instead, he simply
19 spent it on himself on his lavish home in Atlanta, on a luxury
20 car, on artwork, on watches, on the cryptocurrency, among many,
21 many other things. And in order to keep that money and to keep
22 the con going, he lied. He lied about what he would spend the
23 basketball players on. He lied in the vision plan about what
24 and what corporation were supporting.

25 He and his co-conspirator lied about signing James

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1 Wiseman. The defendant lied when he impersonated his father.
2 And once the news broke that someone else had actually
3 purchased the Atlanta Dream, the defendant and his
4 co-conspirator kept lying to keep the con going. And what
5 happened to the money before the defendant spent it? He
6 laundered it making it harder to find and harder to trace by
7 sending it to a bank account that wasn't in his name and then
8 moving it from account to account to account. In short, the
9 evidence has shown beyond any reasonable doubt that the
10 defendant is guilty.

11 We're going to cover three things today. First, I
12 will explain what is not seriously disputed between the
13 parties. Second, I'm going to discuss the charges. And third,
14 I will tell you what the evidence shows and how it proves that
15 the defendant is guilty. The defendant is charged in five
16 counts. He's charged with bank fraud. He's charged with wire
17 fraud. He's charged with money laundering and with conspiring
18 to commit these offenses. Before I turn to why the defendant
19 had the intent to defraud his victims, there are just a few
20 elements of these charges that we need to talk about. Judge
21 Broderick will give you more detailed instruction on the law
22 and what he says controls. I will just talk a little bit about
23 what I expect he will say about some of these elements which
24 aren't really in dispute.

25 First, interstate wires. Count Two is called wire

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Summation - Mr. Thompson

1 fraud. I expect that Judge Broderick will tell you that a wire
2 must pass between two or more states. Every telephone call is
3 a wire. Every email is a wire. Every zoom call is a wire.
4 Wiring of money and bank transfers, wires. You saw emails in
5 this case that the defendant sent in furtherance of his fraud.
6 The recipients of these emails lived in different states.
7 Some, such as the WNBA employees were based in New York.
8 Others, such as Dwight Howard, were in Florida at the time of
9 the fraud. There's testimony from Mr. Howard explaining that
10 he was based in Florida playing in the NBA's bubble during this
11 time period.

12 You will also see Cathy Engelbert's signature block
13 from her emails clearly showing that the WNBA's headquarters
14 are in Manhattan. You heard testimony from John Brock
15 explaining that he participated in a zoom call in 2020 with
16 Calvin Darden, Jr., Calvin Darden, Sr., Cathy Engelbert, Jamin
17 Dershowitz, and Dwight Howard, participants on this call joined
18 from different states. So the interstate wires element is not
19 seriously at issue.

20 The second issue is venue. I expect Judge Broderick
21 will tell you that the government needs to prove something
22 called venue. This means that a part of each of the crimes
23 happened in the Southern District of New York. The Southern
24 District of New York includes Manhattan, the Bronx, Westchester
25 and several other counties. You heard testimony from John

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1 Brock that he visited the WNBA's headquarters in Manhattan, and
2 Brock told you that he participated in the zoom call with Cathy
3 Engelbert and James Dershowitz, both employees of the WNBA
4 which is headquartered in Manhattan. You heard testimony and
5 you saw records that the money that the defendant stole from
6 his victims was directed into bank accounts associated with
7 addresses in Manhattan. So these all establish venue. You
8 also saw that the defendant purchased a Grand Piano from
9 Steinway and over \$150,000 worth of artwork. You saw records
10 showing that both Steinway and the art gallery from which the
11 defendant purchased this art were based in Manhattan. So,
12 members of the jury, just like interstate wires, the question
13 of venue is not seriously at issue.

14 Let's now turn to the evidence. There are four key
15 facts that cannot be reasonably disputed between the parties.

16 MR. RICCO: Your Honor, I'm reluctant to consult. I
17 object to this continuing reference that issues are not in
18 dispute by the defense.

19 THE COURT: Ladies and gentlemen, this is the parties
20 opportunity to present argument. These are arguments. Whether
21 they appeal to your common sense, that's entirely up to you.
22 All right. All right. You may continue.

23 MR. RICCO: Your Honor, my objection goes to burden.

24 THE COURT: Well, I'll allow it. Objection overruled.

25 MR. THOMPSON: Let's start there, members of the jury,

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1 what cannot be seriously in dispute. First, there can be no
2 serious dispute that Chandler Parsons wired \$1 million to
3 Charles Briscoe, the defendant's co-conspirator. And that over
4 half of this \$1 million was ultimately transferred to the
5 defendant himself. Second, there is no serious dispute that
6 Dwight Howard wired more than \$7 million to Legacy AC, LLC.
7 These wires were sent by BMO, Howard's bank on behalf of
8 Howard. I expect that Judge Broderick will instruct you that
9 Count Three, bank fraud, requires that this bank was insured by
10 the Federal Deposit Insurance Corporation.

11 Jeffrey Schmidt testified and he told you just this.
12 He told you that BMO is in fact insured by the Federal Deposit
13 Corporation. And this is relevant, members of the jury,
14 because the bank itself is relevant for the purposes of the
15 bank fraud charge. Third, there is no serious dispute that the
16 defendant's investment group never purchased the Atlanta Dream,
17 and that Dwight Howard did not become the owner of the Atlanta
18 Dream. John Brock testified, he told you that the Dream was
19 actually sold to Northland. Here's his testimony on that
20 point. And Suzanne Abair, the chief operating officer and
21 president of Northland, she also told you that it was she and
22 two other individuals that purchased the Dream.

23 Finally, there's no serious dispute that neither
24 Dwight Howard nor Chandler Parsons ever got their money back.
25 Dwight Howard told you this himself. "Did you get your money

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1 back? Answer: No, sir." And the FBI's forensic accountant
2 who testified, she told you this about Chandler Parsons' money.
3 What is in dispute, members of the jury, is whether the
4 defendant intended to defraud Dwight Howard and Chandler
5 Parsons, and whether he intended to launder this fraud money.

6 THE COURT: Ladies and gentlemen, just to remind you,
7 it is the government's burden to prove the defendant's guilt
8 beyond a reasonable doubt, and that burden remains with the
9 government. Okay. Go ahead.

10 MR. THOMPSON: And there's no question that he
11 intended to commit these crimes. Today I'm going to focus on
12 eight reasons, eight reasons that allow you to know that the
13 defendant knowingly and willfully committed these crimes. The
14 first reason you know that the defendant intended to defraud is
15 because he told lie after lie to get the money. The defendant
16 cheated Dwight Howard. He told Dwight Howard he would purchase
17 the Atlanta Dream on his behalf. He took \$7 million from
18 Dwight Howard for this purpose. The defendant did not purchase
19 the Atlanta Dream. The defendant did not purchase anything for
20 Dwight Howard. Howard didn't get anything. The defendant just
21 lied to take his money. Look at what the defendant said to
22 Briscoe, his co-conspirator, just weeks before Howard sent his
23 first wire "I'm not sure you understand how big of an
24 opportunity this Atlanta Dream deal can be for us. We need to
25 keep this deal with Dwight by any means."

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1 By any means, members of the jury, that's what he
2 said. This was a big opportunity for him. But the opportunity
3 wasn't to buy the Dream, it was to use that as an opportunity,
4 a hook, to take millions of dollars from Dwight Howard in
5 exchange for nothing. That was the real opportunity for the
6 defendant, and that's why he lied.

7 Take a look at Government Exhibit 401-961. The
8 defendant says "I think we can get five from Dwight, bro." \$5
9 million, that's what the defendant wanted. And he got it. In
10 fact, he got even more than that, but only by lying to Dwight
11 Howard. Let's talk about the specific lies that the defendant
12 told to steal this money. Brock told the defendant that it
13 would be helpful if he put together a plan for how he would
14 manage the Atlanta Dream, so the defendant created the vision
15 plan. There's no question about that. Look at this text on
16 your screen. The defendant told Briscoe that he's going to
17 send him a deck. Just over an hour later, the defendant
18 emailed the vision plan to Briscoe. And you know, members of
19 the jury, that the defendant and Briscoe sent this vision plan
20 to Brock, to Howard, and to Howard's bank. The vision plan
21 contained the defendant's words. And he was so eager to
22 convince Dwight Howard to hand over his money that he didn't
23 let the truth get in his way.

24 At this point you know that the vision plan was full
25 of lies. You have heard this from many of the people who the

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1 defendant said would serve on an imaginary advisory board if he
2 was successful in buying the team. Those people have told you
3 that they did not know Calvin Darden, Jr., that they did not
4 agree to serve on any advisory board and that they did not give
5 Calvin Darden, Jr., or anybody else permission to use their
6 names or pictures in the vision plan. You heard this from Issa
7 Rae. You heard this from Rosalind Brewer. You heard this from
8 Stuart Duguid, Naomi Osaka's agent, and you heard this from
9 Jennifer Baltimore. The defendant also lied about corporate
10 sponsorships in the vision plan. Brandon Anthony told you that
11 Tyler Perry Studios never entered into a corporate partnership
12 with Darden Sports Group or agreed to form a joint venture
13 production company.

14 You heard testimony from Jennifer McMullin, a senior
15 brand manager at Aflac. She testified that Aflac had not even
16 had preliminary discussions about corporate sponsorship with
17 Darden Sports Group, Calvin Darden, Jr., or Calvin Darden, Sr.
18 Rosalind Brewer, the former COO of Starbucks. She testified
19 that Starbucks never had any sort of sponsorship agreement with
20 Darden Sports Group or Calvin Darden, Jr. Now, Brock explicitly
21 asked the defendant if the people he listed on the advisory
22 board had agreed to serve on this advisory board. And what did
23 the defendant say? He said yes. And the defendant also told
24 Brock that the corporate sponsors were on board. Complete
25 lies. He not only sent his vision plan to Brock. He also sent

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1 it to Dwight Howard, and with these lies he managed to cheat
2 Howard out of \$7 million. And after getting their hands on
3 Howard's funds, the defendant and Briscoe then told Howard that
4 he had succeeded in purchasing the team. Look at Government
5 Exhibit 201-J. This is a message from Briscoe, the defendant's
6 co-conspirator, to Howard in January of 2021 after Howard had
7 sent the two wires totaling \$7 million. Briscoe tells Howard,
8 "It's too late for Lebron James to swoop in and buy the Dream."
9 Howard asked, "We still good on that?" And Briscoe says,
10 "yes."

11 Now, the defendants lies also conned Chandler Parsons
12 out of \$1 million. And here's how this fraud worked. As
13 you've learned in this trial, Charles Briscoe, the defendant's
14 co-conspirator was a sports agent. He had access to the very
15 people the defendant wanted to steal money from, and the
16 defendant used Briscoe to access these people. The defendant
17 knew that Briscoe had a relationship with Chandler Parsons.
18 The defendant told Briscoe that he knew and had a relationship
19 with James Wiseman, a top pick in the NBA draft, and that
20 Wiseman would sign with Briscoe. Take a look at government's
21 exhibit 401-255. The defendant tells Briscoe "he will sign an
22 employment agreement with DSG and loan documents." The
23 defendant is talking about Wiseman here. The defendant told
24 Briscoe that Wiseman would only sign with Briscoe if someone
25 gave Wiseman a \$1 million loan. These were more lies, more

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1 lies from the defendant. And that's right, members of the
2 jury, the defendant didn't just lie to his victims, he also
3 lied at times to his own co-conspirator in his own fraud. And
4 the defendant told these lies because the defendant knew that
5 Briscoe had a network of wealthy athletes who might not have
6 significant business experience that the defendant could Target
7 for fraud.

8 And how do you know these are lies? You heard it for
9 yourself. Wiseman testified that he didn't know the defendant,
10 that he had never met the defendant, and that he never did any
11 sort of business with the defendant. The defendant just picked
12 a top NBA draft pick because he knew that Briscoe would want to
13 sign him. Now, the defendant and Briscoe fooled Parsons into
14 giving them the loan money that the defendant falsely claimed
15 Wiseman wanted. The defendant instructed Briscoe how to
16 convince Parsons to give them the \$1 million. He told Briscoe
17 to tell Parsons that Briscoe would provide an additional
18 guarantor if Parsons gave up the money, and the defendant told
19 Briscoe that he himself would serve as his guarantor. Now, you
20 already know that this whole idea of a loan was fiction. It
21 was based on the defendant's first lie that he knew James
22 Wiseman. So when the defendant is telling Briscoe all kinds of
23 things to say to Parsons about guaranteeing this loan, the
24 defendant knows that there's no loan at all. And, members of
25 the jury, that's why he agreed to guarantee it. He's not

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1 concerned about guaranteeing a large amount of money that he
2 never intended to pay back. And you saw in this trial that
3 Briscoe followed the defendant's plan. Briscoe prepared a
4 promissory note for Parsons just as the defendant recommended.
5 And just as he promised, the defendant was the guarantor for
6 this loan. That's because they were co-conspirators, and
7 that's because they worked together in this fraud.

8 Now, this wasn't the extent of the lies. They had to
9 provide some sort of proof to Parsons that they could actually
10 sign Wiseman. So to get this fraud over the finish line,
11 Briscoe sent Parsons a player agent agreement. Now, they
12 couldn't get Wiseman's signature or the signature of his mother
13 on this document. And you know why that is, ladies and
14 gentlemen. That's because again the defendant didn't know
15 James Wiseman. He lied about that. So what did they do
16 instead? They forged the necessary signatures and sent a
17 fraudulent document to Parsons, and they did that because
18 Parsons wouldn't give up the money unless Wiseman had signed
19 with Briscoe. And remember, there's no question about this.
20 Wiseman told you that this was forgery. Question: Did you
21 sign this document? Answer: No, sir."

22 That's what the representative from DocuSign told you
23 too. She told you that to sign the player agent agreement,
24 someone only needed access to Briscoe's email. She also told
25 you that Wiseman's signature and the signature of his mother

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1 were executed from the same IP address, and that this was the
2 IP address that Briscoe used to view this document. I
3 anticipate that Judge Broderick will instruct you that false
4 representations are an element of the fraud charges against the
5 defendant. And you have seen, members of the jury, over this
6 trial that the defendant told many lies and made many false
7 representations to get money from his victims.

8 So let's talk about the money. The second reason you
9 know that the defendant intended to defraud his victims and
10 intended to commit these crimes is because he got all of the
11 money while the victims got nothing. Chandler Parsons wired \$1
12 million to Briscoe, the defendant's co-conspirator. And
13 Briscoe wired \$544,000 to Legacy AC, LLC the very next day.
14 Howard wired over \$7 million to this same Legacy LLC account.
15 So let's take a step back for a moment.

16 What was Legacy AC, LLC? And why did almost all of
17 the victims money go there? Legacy AC, LLC was the defendant's
18 shell corporation. The defendant used it to run his frauds.
19 Sure, it was registered in the name of someone else. It was
20 registered in the name of Trevor A. Baldwin. You saw documents
21 that say that, and you heard testimony about this. But this
22 was just to give the defendant cover. He had Legacy AC, LLC in
23 someone else's name because this was the account where his
24 fraud money went, and he didn't want his name on it. You know
25 that the defendant controlled Legacy AC, LLC and that he used

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1 it to commit these frauds against Chandler Parsons and Dwight
2 Howard. Legacy AC, LLC's incorporating documents and financial
3 documents, you see these on the screen here, are linked to not
4 just one of the defendant's addresses, but two. And the
5 defendant provided the account information for Legacy AC, LLC
6 when he was scamming people. That's exactly what he did in
7 this case. On the left of this slide is an email from the
8 defendant to Briscoe. The defendant tells Briscoe to wire
9 funds to this Legacy AC, LLC's bank account. On the right of
10 the slide is a text from the defendant to Briscoe. Again, the
11 defendant tells Briscoe to wire money to the Legacy AC, LLC
12 bank account. The defendant had the fraud money end up in the
13 Legacy AC, LLC account because it was his entity under his
14 control. And he knew that he could control his fraud money
15 using this account.

16 So we know that the money went to the defendant, but
17 did any of it make its way back to the victims? No. Howard
18 testified and told you this for himself, and the forensic
19 accountant you heard from, she told you that none of this money
20 went back to Chandler Parsons' account. The victims, they also
21 didn't get anything for the money that they gave the defendant.
22 Howard and Parsons gave the defendant their money expecting
23 that the defendant will deliver on his representations and make
24 good on his promises. And the fact that almost all of these
25 proceeds went to the defendant tells you all that you need to

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1 know. His promises were lies. The defendant spent the money
2 that he stole from Parsons and Howard on himself. Almost
3 immediately after Howard wired the millions of dollars, the
4 defendant started spending this money on luxury items and
5 personal expenses. What does this tell you? It tells you that
6 he never intended to use this money to buy the Dream. It was
7 always intended to fund his extravagant lifestyle. The
8 defendant bought a \$314,000 Lamborghini with the fraud money
9 from Howard. He bought a \$110,000 Steinway Grand Piano with
10 Howard's money. He spent \$765,000 of Howard's fraud money on a
11 down payment for a luxurious \$3.7 million home. He spent
12 \$218,000 of Howard's fraud money to equip that home with tech
13 upgrades. He put in an elevator. He put in \$29,000 koi pond.
14 He bought hundreds of thousands of dollars worth of art. He
15 set up an outdoor TV. He spent \$240,000 on furniture, a home
16 gym, light fixtures, interior design services and other home
17 expenses. And he paid for all of that using Howard's fraud
18 money.

19 Members of the jury, it's easy to spend money without
20 a care when it isn't your money. I could keep going, but the
21 bottom line is this: The defendant spent \$6,149,133.95 of
22 Dwight Howard's money. However it served him, however he
23 wanted, and however he saw fit. And he did the exact same
24 thing with the money he stole from Chandler Parsons. The very
25 same day the defendant got \$544,000 of the fraud money from

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1 Parsons, he spent nearly \$90,000 of it on luxury watches. He
2 sent tens of thousands of dollars to his own bank accounts. He
3 spent thousands of dollars at Best Buy at Lowes, at Cartier, at
4 Overstock.com, and he spent about \$200,000 of it on a Mercedes
5 G63 SUV. I could continue and walk you through the thousands
6 of dollars he spent at Bose, at Macy's, at G Fine Jewelers, but
7 I trust you understand what happened here. The defendant and
8 Briscoe lied to Parsons and told him that he needed to provide
9 \$1 million to do business with James Wiseman, the top NBA draft
10 pick who the defendant did not actually know at all. And after
11 stealing this money from Parsons, the defendant spent his cut
12 of these fraud proceeds on luxury items for himself. That's
13 how you know that the defendant had the intent to defraud, the
14 cars, the luxury home, the expensive art, the millions of
15 dollars. This was his motive. It was his greed. The
16 defendant had the intent to commit these crimes because it paid
17 for his lavish lifestyle. And the victims got nothing.

18 The third reason you know that the defendant had the
19 intent to defraud is because he impersonated his father and
20 leveraged his father's good name and successful career to
21 commit these frauds. The defendant used two phone numbers to
22 deceive people. One of these numbers ended in 5686, and the
23 other number ended in 1779. He used one number to text with
24 some people as himself, Calvin Darden, Jr.; while using the
25 other number to text with certain people as his father Calvin

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1 Darden, Sr. The defendant even pretended to be his father in
2 messages that he sent to Briscoe. This is Government Exhibit
3 404. The defendant texted from the 5686 number and said to
4 Briscoe: Hi, Charles. I'm no longer on Coke's board. I'm on
5 Target, Cardinal Health, Aramark. Was the defendant on any of
6 these boards? No. But his father was, and this was part of
7 the fraud. The defendant still impersonating his father then
8 told Briscoe that he should work with Calvin Darden, Jr.

9 Now I'm just going to say this again. The defendant
10 impersonating his father Calvin Darden, Sr., told Briscoe via
11 text that he should get to know Calvin Darden, Jr., and it was
12 the defendant impersonating his father to Briscoe who started
13 the discussion about Wiseman and kicked off the fraud that the
14 defendant and Briscoe eventually ran on Parsons. Briscoe says,
15 Your son has James Wiseman. That's awesome. He's a bigtime
16 player. And Briscoe text the defendant because the defendant
17 led him to believe in this moment that he was talking to Calvin
18 Darden, Sr. The defendant pretending to be his father
19 responds, My son will make the introduction for you. More
20 insane lies.

21 Now, while the defendant is texting Briscoe using the
22 5686 number and pretending to be his father Calvin Darden, Sr.,
23 the defendant began texting with Briscoe as himself, Calvin
24 Darden, Jr., using the phone number ending in 1779. Look at
25 this text. The defendant text Briscoe and says: Hi, Charles.

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1 This is Calvin Darden, Jr. My father asked me to give you a
2 call. And why did the defendant do all of this? He did this
3 because he knew that Briscoe could get him access to the very
4 people that he wanted to defraud.

5 Pretending to be his father wasn't a one-off or some
6 sort of accident. He did the same exact thing in the Atlanta
7 Dream fraud. The defendant pretended to be his father when he
8 spoke to Schmidt at BMO bank. Schmidt testified that at all
9 times he thought he was speaking to Calvin Darden, Sr. You saw
10 text messages that Schmidt and his colleagues exchanged with
11 who they thought was Calvin Darden, Sr. In the text on the left
12 of this slide you saw that one of the BMO employees asked for
13 financial statements. The defendant then emailed records
14 associated, not with him, but with his father, and he did this
15 because he was tricking the bankers into thinking that they
16 were dealing with his father. Schmidt testified about these
17 documents. He told you that these financial statements were
18 consistent with Calvin Darden, Sr., the individual who the
19 defendant put in the vision plan.

20 So why does this all matter? What does it show? Ask
21 yourselves, does anyone attempting to organize and execute
22 legitimate business transactions impersonate anyone, let alone
23 their father? No, they don't. The truth is simply this: The
24 defendant pretended to be his father because his father was a
25 successful businessman, and using his father's name gave a

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1 veneer of credibility to his frauds, credibility he needed to
2 steal money from his victims.

3 Reason four. The fourth reason you know that the
4 defendant intended to defraud his victims is because the lies
5 he told were important, and he knew that these lies were
6 important. These lies were not small. They were important and
7 material to the defendant's fraud. You know this because
8 Brock, Schmidt and Howard testified. They told you that the
9 list of celebrities and successful business people in the
10 advisory board and the list of corporate sponsors in the
11 advisory board impressed them, that this made them believe that
12 the defendant's group was legitimate. You know that these lies
13 were material because it just makes sense. Anyone interested
14 in or invested in a professional sports team would care about
15 corporate sponsors, would care if celebrities were on board.
16 That would drive ticket sales and it would attract positive
17 attention. And you know that the lies were material because
18 the defendant spent so much time crafting them and making them
19 look real. He put them in a shiny and polished vision deck,
20 and he set up an elaborate detailed plan setting forth how he
21 would manage the team if he won.

22 There really weren't any limits to these lies. The
23 defendant just made up whatever he thought was necessary to get
24 Dwight Howard on board. You can see that in the defendant's
25 text to Briscoe. Here's Government Exhibit 401-925. The

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1 defendant said, The deal needed to happen by any means. And
2 look at Government Exhibit 401-1000. The defendant says, Bro,
3 we need him at 7. That's \$7 million. That's Howard at \$7
4 million. And what does Briscoe say in response. He says, I
5 already know, bro, because me and you can both use the money.
6 They intended all along to pocket Howard's \$7 million. And
7 through the defendant's lies and his vision plan, they pulled
8 it off. Now, you know that the defendant intended to defraud
9 because he told these material lies that were designed
10 specifically to impress the person who was running the sales
11 process of the team, to trick Howard to turning over \$7
12 million, and to mislead the bank that ultimately wired the
13 funds of Howard's money. He couldn't have gotten this far
14 without these lies, and that's why he lied.

15 The fifth reason you know that the defendant had the
16 intent to defraud is because he created and relied on
17 fraudulent and misleading documents to carry out his crimes.
18 You saw this in how the defendant defrauded Chandler Parsons.
19 We talked about this a little this morning. He and Briscoe
20 didn't know Wiseman and Wiseman's mother, but they needed their
21 signatures, so they forged their signature and passed off the
22 fraudulent documents. He did the same thing to defraud Dwight
23 Howard. The defendant told Howard he was going to buy the Dream
24 on his behalf, and also told him he would set up a marketing
25 company. Howard gave the \$7 million for those purposes.

OA3BDAR1

Summation - Mr. Thompson

1 And then the defendant pulled a fast one. He slipped
2 Howard a convertible promissory note. The promissory note was
3 a cheap trick intended to justify what you know was fraud. It
4 was a way for the defendant to steal millions of dollars based
5 on lies while giving Howard exactly nothing. And now in this
6 trial he's trying to pull the same fast one by pointing to this
7 document.

8 And don't forget about the February 15, 2021 letter of
9 intent. This was the document the defendant wrote after it was
10 becoming irrefutable that he had not purchased the team, but
11 that he had kept Howard's money. The document, you'll recall,
12 describes a business transaction where the actual owners of the
13 team would sell nine percent of the team to the defendant,
14 Darden Sports Group, and the defendant's father. But Suzanne
15 Abair, one of the actual owners of the Dream exposed this for
16 what it was, more lies from the defendant. She told you that
17 neither she or any of the actual owners of the Dream ever
18 engaged with anyone about selling part or the entirety of the
19 team. And she had told you that she had never seen this bogus
20 letter of intent before preparing to testify. More fake
21 documents, more lies.

22 The sixth reason you know that the defendant had the
23 intent to defraud is because he worked hard to cover up his
24 lies and conceal his fraud. Brock testified that he told the
25 defendant that the team had been sold to someone else in

OA3BDAR1

Summation - Mr. Thompson

1 February of 2021. It was around this same time February 2021
2 that Dwight Howard began demanding the return of his \$7
3 million. Schmidt testified to this, and you saw emails sent by
4 BMO employees requesting that the defendant return Howard's
5 money. So what did the defendant do? Did he return the money?
6 Did he respond to these emails asking where the money was? No.
7 He created that fake letter of intent saying that his
8 investment group would purchase part of the Dream from the
9 actual owners. And there's no question that the defendant made
10 this letter of intent himself. Here's an email in which the
11 defendant is emailing this fake document to himself. And you
12 know, members of the jury, we just discussed that this
13 document, this transaction had no basis in reality. Suzanne
14 Abair told you that. The defendant told Briscoe this lie so
15 that Dwight Howard would think that he hadn't been conned.

16 Remember, at this time Briscoe was Howard's agent.
17 Look at this text Government Exhibit 401-1177. The defendant
18 says, I told Brock we're going to do the deal with them. We're
19 not going to be named in the deal though. That's convenient.
20 They want my father's and the mayor's help in getting the new
21 project done. Can you let Dwight know. He then tells Briscoe
22 that "it's the same deal that we laid out initially." This is
23 all after the defendant has been told that the Dream was sold,
24 that the Dream had been sold to someone else. This deal that
25 he's talking about is dead, but he's continuing to claim and

OA3BDAR1

Summation - Mr. Thompson

1 make people think that it's still happening. These are just
2 more lies from the defendant. You learned that the individuals
3 who actually purchased the Dream never discussed any deals with
4 him, and Brock testified that at the had no contact with the
5 defendant about the Atlanta Dream after he told him that the
6 team had been sold to someone else. You know that the
7 defendant had the intent to defraud because he told more lies,
8 created more fake documents, and made up the most farfetched
9 stories to hide the simple truth, which is that he took
10 Howard's money for nothing in return.

11 The seventh reason you know that the defendant had the
12 intent to defraud is because he laundered the money. With the
13 help of others such as Trevor Baldwin and Charles Briscoe, he
14 moved the funds that he stole into various accounts under his
15 control. Dwight Howard wired just over \$7 million to Legacy
16 AC, LLC. That's the defendant's fraudulent shell corporation.
17 Howard wired this money between August 2020 and December 2020.
18 Over the next roughly one-and-a-half years, the defendant moved
19 the funds that he tricked Howard into giving up into six other
20 accounts in his name or otherwise under his control. These
21 accounts for the most part had relatively little or absolutely
22 no money in them, aside from the money that the defendant stole
23 from Howard. Did the defendant send all this money to these
24 accounts, send all these wires, make all these transfers
25 because it was somehow the best way to do business? Of course

OA3BDAR1

Summation - Mr. Thompson

1 not. The defendant sent these wires and made these transfers
2 to try to distance himself from the crimes he committed and the
3 frauds that he ran. That's what money laundering is. The
4 eighth reason you know that the defendant had the intent to
5 defraud is because he used the same methods that he used in the
6 past. You heard testimony that in the past the defendant
7 committed fraud by impersonating his father and by using his
8 father's name to give legitimacy to his lies. That's how you
9 know that the defendant in this case had the intent to defraud.
10 This wasn't an accident. He carried out this fraud using the
11 same method as the previous frauds for which he had been
12 convicted. Those are eight reasons, eight reasons that let you
13 know beyond a reasonable doubt that the defendant had the
14 intent to defraud his victims.

15 Members of the jury, I'm about to sit down. Over the
16 course of this trial you have seen overwhelming evidence of the
17 defendant's frauds. You have heard how the defendant defrauded
18 Chandler Parsons and Dwight Howard out of \$8 million total.
19 You heard how he lied to try to cover up his tracks when Dwight
20 Howard began demanding repayment. Look at his actions.
21 Pretending to be his father, wiring fraud proceeds from account
22 to account, creating a vision plan full of lies, keeping and
23 spending the millions that he stole on luxury items for
24 himself. The evidence of his fraud is overwhelming. It's
25 clear and it is plain. If you look at all of the evidence you

OA3BDAR1

Summation - Mr. Thompson

1 have seen and heard, and if you weigh it and apply your common
2 sense to the facts in front of you, you will reach the only
3 verdict that is consistent with the evidence, the law, and your
4 common sense that the defendant is guilty.

5 THE COURT: Okay. Thank you very much. Ladies and
6 gentlemen, we're going to take a brief break about 10 minutes.
7 We'll come back and get you. Remember, do not discuss the
8 case. You heard the government's summation. We're going to
9 hear from the defense next. Go back. Relax. We'll come and
10 get you for the defense summation in about 10 minutes. Thank
11 you very much.

12 (Continued on next page)

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OA3BDAR1

Summation - Mr. Thompson

1 (Jury not present)

2 THE COURT: Okay. You may be seated. Is there
3 anything we need to discuss before we take our break from the
4 government?

5 MR. THOMPSON: No, your Honor.

6 THE COURT: From the defense?

7 MR. RICCO: Yes, Judge. Thank you very much for that
8 instruction you gave the jury. That satisfied my concerns.

9 THE COURT: Okay.

10 MR. RICCO: Thank you. The other issue, Judge, is as
11 you may notice that Ms. Reed is not here this morning.

12 THE COURT: Yes.

13 MR. RICCO: Her mom is very ill, and so she is
14 attending to her mom in Maryland and she wanted the Court to
15 know.

16 THE COURT: All right. Thank you for letting me know,
17 and pass along my hope that things resolve themselves
18 positively, but okay. Thank you.

19 MR. DONALDSON: That's it, Judge. Thank you.

20 THE COURT: All right. See everybody in about 10
21 minutes. Thank you very much.

22 (Recess)

23
24
25

OA3JDAR2

Summation - Mr. Donaldson

(In open court; jury not present)

THE COURT: Is there anything we need to discuss before we get the jury?

MR. THOMPSON: Not from the government, your Honor.

THE COURT: From the defense?

MR. DONALDSON: No, your Honor.

THE COURT: Okay. Let's get the jury.

(In open court; jury present)

THE COURT: Ladies and gentlemen, I hope you had a good break. We're now going to continue with summations with the defense summations.

Mr. Donaldson.

MR. DONALDSON: Thank you, your Honor.

Good morning. I didn't get the opportunity to speak to you during openings. My colleague, Mr. Ricco, did. And we tried to lay out what we thought or what we wanted you to focus on and to remember that you have to keep that open mind that the Court was talking about and that you have to not just listen to one side and end your thoughts there. That's not how this works.

I think the Court even instructed you early on that you have a burden, but there might be another side. There might be another narrative. The witnesses might say one thing and then something else might come up that changes your mind about what they said. It's called listening. It's life. It's

OA3JDAR2

Summation - Mr. Donaldson

1 what we do as adults.

2 And so that's what I want you to continue doing for
3 the rest of this time I'm speaking. When I sit down, the
4 government gets back up, when you deliberate, I want you to
5 continue listening and keeping an open mind because for no
6 other reason than you promised you would do that. You promised
7 you would be fair. That's what you promised. And so we want
8 to hold you to your promise. We want to make sure that you
9 stay focused on your promise to be fair.

10 Mr. Darden, my client, our client sitting over there,
11 he, in fact, did plead guilty in the past. There's no doubt
12 about that. We knew that. He pleaded guilty. He admitted
13 what he did in the past. He accepted his responsibility for
14 what he did in the past. He raised his hand and testified for
15 the government related to what he did in the past. That's what
16 he did. There's no doubt about that.

17 As the government said earlier, there are some facts
18 that are not in dispute. That is that fact, that Mr. Darden,
19 Jr. pleaded guilty in the past. What's also not in dispute is
20 that as soon as he spoke to Mr. Brock, the president or the
21 husband of one of the owners of the Dream, as soon as he spoke
22 to him, he said, I am a felon. I have a prior conviction. You
23 know what that means? That's the part that the government left
24 out. There are a few things that we're going to talk about
25 that the government just conveniently left out.

OA3JDAR2

Summation - Mr. Donaldson

1 That part is important. Why is that important?
2 Because there are no secrets. Mr. Darden, Jr. did not keep
3 that a secret. What fraudster in their right mind tells the
4 person who he's trying to defraud that "I am a felon" up front?
5 You need to know that about me. Who does that? I think the
6 judge said common sense. The prosecutor said common sense.

7 I am imploring you to use your common sense for the
8 rest of the time I'm standing, when they get back up, and when
9 you go deliberate. Use your common sense because your common
10 sense is going to take you down a road you may not want to go
11 down. But I'm here to tell you you're going down that road.
12 I'm taking you down that road, like it or not.

13 First thing out of his mouth, Mr. Brock, I am a felon.
14 And what did Mr. Brock say? He knew that as well. And what
15 did Mr. Brock do? He continued to speak to him about the sale
16 of the Dream. He shared internal documents with Mr. Darden,
17 Jr., a prior convicted felon. He clearly did not hold that
18 against Mr. Darden, Jr., a prior convicted felon.

19 Now, the question really is are you? Are you going to
20 do that? The judge is going to give you specific instructions
21 as to what you're supposed to do with that knowledge, and I can
22 guarantee you it's not if you're in there saying right now when
23 you heard the other day a paralegal get up there and testify
24 that my client is a convicted felon. If that made you say at
25 that point, well, he must be guilty, then you have now violated

OA3JDAR2

Summation - Mr. Donaldson

1 your oath. You have violated that what you promised not to do.
2 You are now sitting here as an unfair juror, and that's not
3 what you promised to do.

4 I kind of heard you say that. If you are saying right
5 now after the government got up here and said, well, you know
6 what? He's impersonating his dad like he did before, he must
7 be guilty. If you're saying that now, guess what? You're not
8 being a fair juror, and you're now violating your promises not
9 only to us, but to yourselves.

10 That's what Mr. Ricco was talking about in his
11 opening, commitment to yourself and the responsibility you have
12 about being jurors, how important that is, the sacrifices
13 people made before for you to sit there, to be fair. So if you
14 are saying right now that he must be guilty because of his
15 prior convictions, you're being unfair.

16 There was no impersonation. Zero, zilch, nada,
17 nothing. That's why we started out with I am a felon. That's
18 why that's important. That's why they didn't tell you that.
19 That's why they didn't remind you of that because that little
20 thing is important. There is no impersonation. I am a felon
21 that's what I did. I know you're a felon, that's fine. Let's
22 do business.

23 How do we know there's no impersonation? Mr. Brock.
24 Details - I think someone said a long time ago the devil's in
25 the details - angels, too, angels are in the details as well.

OA3JDAR2

Summation - Mr. Donaldson

1 Throughout the process Brock knew he was speaking to Darden,
2 Sr. That's one of those indisputable facts that the government
3 said.

4 He spent ten years with Darden, Sr. on the board.
5 That's an indisputable fact. He talked to him several times in
6 those ten years. That's an indisputable fact. Met with him
7 several times in those ten years, indisputable fact. Received
8 emails, said my "father and I," indisputable fact. Kind of
9 makes you wonder, if I am impersonating my dad, why am I
10 writing emails saying, my father and I want to meet with you?

11 That common sense thing starts, take you down a road
12 because I know sometimes when you sitting down and the
13 government says something, you just want to believe it because
14 the government said so. But no.

15 Saw him on Zoom calls. Mr. Brock saw Mr. Darden, Sr.
16 on Zoom calls, on a video talking to him, talking to Junior,
17 talking to other people, how is that impersonation? Why would
18 you be impersonating your father if your father is on the Zoom
19 calls with someone that your father knows for ten years, shared
20 board meetings with, they know each other's family? How am I
21 impersonating my father to this dude? Common sense dictates
22 that is not -- doesn't make sense.

23 Not one time did Brock tell you he thought,
24 questioned, was concerned, imagined, anything that he wasn't
25 speaking to Darden, Jr., he was speaking to Darden, Sr. Not

OA3JDAR2

Summation - Mr. Donaldson

1 one single time. No impersonation.

2 Brock and Schmidt. Now, Schmidt never said that he
3 had concerns at all that he was not speaking to Darden, Sr.,
4 not one single time. Feel free to look back through all the
5 transcripts. Not one single time did Schmidt say, you know
6 what? I think I might be talking to somebody else and not
7 Darden, Sr. That did not happen.

8 So if that did not happen, that's called an
9 indisputable fact. It didn't happen. Schmidt received banking
10 and other documents from Senior. Not one time did Schmidt say,
11 these might be coming from somebody else. Not one time did he
12 say that. As a matter of fact, what did Schmidt do? He tried
13 to get another compliant. He tried to bring Darden, Sr. in.
14 He started asking him for documents so he can try to snatch
15 another client up because he wanted that money.

16 I mean, there's nothing wrong with bankers wanting
17 money, but that's what he was doing, plain and simple. Not one
18 time did he say, this might not be coming from Darden, Sr.
19 Darden, Jr. might be -- somebody else might be impersonating
20 him. There's no evidence of that.

21 It doesn't matter what phone number used another
22 number. It doesn't matter. It can't matter because the red
23 part is the question. Do you have any evidence in this trial
24 anywhere -- and I mean anywhere that Schmidt was not speaking
25 to Darden, Sr.? You don't have it.

OA3JDAR2

Summation - Mr. Donaldson

1 What you have is the government saying it. And my
2 father always told me just because somebody says something,
3 doesn't make it true. What you have is them saying that
4 without a scintilla – a word we like using – a scintilla of
5 evidence to support that, but let's keep going.

6 We know he's not impersonating him. Howard, Sr. on
7 the July Zoom call, Howard, Sr. on another July Zoom call,
8 Howard, Sr. on a January Zoom call, Howard, Sr. on multiple
9 phone calls with Brock, Howard Sr. on calls with Schmidt,
10 Howard, Sr. in person productive meeting with Sienko and coach.

11 Stop for a second. I'm impersonating my father, but
12 I'm setting up a meeting so that my father and I can talk to
13 the general manager/president of the Dream and the coach of the
14 Dream to talk about purchasing the Dream. So I'm impersonating
15 my father by bringing my father with me to the meeting. They
16 left that part out too.

17 More importantly or equally important, Brock, the
18 person who knows Senior the most, said unequivocally Darden,
19 Sr. played an active role in the Dream purchase. Unequivocal
20 fact. Indisputable fact. So again, where is the evidence of
21 impersonation? Let's keep going.

22 Text messages between Briscoe and Calvin Darden, Sr.
23 The government just got up here and told you those were Darden,
24 Jr. speaking on the text messages. I ask you again, besides
25 them saying that – and I get sometimes people have the power of

OA3JDAR2

Summation - Mr. Donaldson

1 authority when they talk, I get it - but besides them saying
2 that in this courtroom in a court of law where evidence is
3 required, question plus answer is evidence, besides them saying
4 that that was Darden, Jr., where is the evidence that that was
5 Darden, Jr.?

6 Better question. Where is the evidence that it wasn't
7 Darden, Sr.? Besides the government getting up and saying, you
8 see the text messages here, that was Darden, Jr. Somebody
9 should ask, well, how do you know that? A question mark should
10 arose up on top of somebody's head and say, well, how do you
11 know that? And then the answer would have been, I'm thinking
12 it was, it had to be because we need it to be. Other than
13 that, there is no evidence of that. Keep going.

14 Message between Schmidt and Darden, Sr. They got up
15 here again, that was Darden, Jr. sending those financials over,
16 that was Darden, Jr. on the phone call. Question mark pops up,
17 well, how do you know that? Well, because it had to be. He
18 did it before in the past, so this must be the same thing.
19 There's a difference between speculations and inferences.
20 There's a difference between assumptions and inferences.

21 Assumptions we don't use in courthouses. Speculation
22 we don't use in courthouses. Inferences we do. That's not an
23 inference because there is no information, reliable, credible,
24 or otherwise, to support that statement that they made. Except
25 the fact that they said it, and they expect you to believe it

OA3JDAR2

Summation - Mr. Donaldson

1 because they said it.

2 There was no impersonation, zero evidence of
3 impersonation. In fact, it was the complete opposite. It
4 appeared from the evidence that Mr. Darden, Jr., after
5 announcing that he was a felon, did everything possible to show
6 that he wasn't impersonating his father. That's what the
7 evidence shows.

8 Let's talk about Chandler Parsons. Let's talk about
9 this NBA player. Let's talk about this NBA player who the
10 government is saying tried to pay \$1 million to Wiseman, an
11 undrafted athlete, to get him to be part of a sports agency.
12 Let's just think that through for a second. Chandler Parsons
13 as an NBA player was trying to pay \$1 million to an undrafted
14 athlete to make that athlete part of his agency.

15 Just let that sit there for a second. Just let that
16 resonate. Our client is alleged to have tried to help Chandler
17 Parsons, this NBA player, send a million dollars to an
18 undrafted athlete. Just let that sit down for a second again.
19 Just let that resonate with you for a second.

20 Problem that they didn't mention, again, their
21 claiming my client was committing fraud. We're saying there's
22 no attempt at fraud. They're right. That's an indisputable
23 fact we're arguing about intent. There was no attempt to
24 defraud.

25 Government Exhibit 401-263, page 276 to 278, if you

OA3JDAR2

Summation - Mr. Donaldson

1 want to look at it, Briscoe asked whether Wiseman would sign a
2 postdated SPAC. That's what Briscoe did. Client asked,
3 according to them, text message, what in God's name is a SPAC?
4 Because obviously client don't know what a SPAC is. Briscoe
5 said it's where players sign with agents before they enter into
6 the NBA.

7 So go back. Parsons and his agent, Briscoe, his
8 agent, Briscoe, is asking Wiseman, who is not a NBA player, to
9 accept a million dollars from an NBA player for an agency.
10 Again, just let that sit for a second. Just let this fact sit
11 for a second that that's what Parsons was trying to do.

12 But client says to Briscoe about this SPAC, if I'm
13 him, no way I sign a postdated SPAC. Now, stop for a second.
14 They're saying my client's trying to commit a fraud. They're
15 saying my client's working with Briscoe to commit a fraud with
16 Wiseman and Parsons. This text message appears to say that my
17 client does not want to do that, does not think that Wiseman
18 should sign a postdated player agreement, and why would he do
19 something like that? And then he goes on and says, I think
20 that's inviting trouble for him and us.

21 What fraudster in their right mind who's trying to
22 defraud Wiseman and Parsons is now trying to protect Wiseman
23 from signing a postdated SPAC that my client doesn't even know
24 what a postdated SPAC? The first thing is, I wouldn't do that.
25 If I was him, I wouldn't do that. More importantly, that seems

OA3JDAR2

Summation - Mr. Donaldson

1 to be causing trouble for us and him.

2 What fraudster is doing that? It would seem more
3 reasonable, common sense for a fraudster to say, let's do that,
4 I'm going to get him to do that. Or better yet, why don't I
5 just sign his name? But that's not what happened. That's the
6 little part they didn't want you to hear about because that
7 shows a lack of fraudulent intent. But keep going.

8 And regarding Parsons, client played absolutely no
9 role in providing Parsons a forged player contract related to
10 Wiseman, no role at all. The material inducement - and that's
11 important - that the government identified, this forged player
12 contract, Mr. Darden played absolutely no role in that, zero,
13 zilch, nada, absolutely no role. So the material inducement
14 that they're saying caused Parsons to send \$1 million, the
15 forged contract, Mr. Darden played zero role in that.

16 Docusign, I think they put up a witness from Docusign,
17 put up the signatures, had the locations, said where it came
18 from, Briscoe. Briscoe, same place. Briscoe did the
19 signatures. Briscoe did the email. They even tried a few
20 times to call them Darden phones. Check the record. When the
21 witness got up here and testified, Darden phones, Darden phones
22 here, we recovered Darden phones. We got Darden phones and
23 Darden phones this, Darden phones that. Okay.

24 Well, in reality, they're Briscoe's phones, thought
25 I'd tell you that. In reality they're Briscoe's property. In

OA3JDAR2

Summation - Mr. Donaldson

1 reality, Briscoe is the one that did his Docusign. In reality,
2 Briscoe is the one that forged this document.

3 And they have zero evidence in this transcript that
4 that man had anything to do with it. They even have zero
5 evidence in the whole transcript that that man had any
6 knowledge that a forged contract was happening. Let's keep
7 going.

8 Plus we know that based upon the Parsons and Briscoe
9 text chain, Parsons did not even know who Mr. Darden was.
10 Mr. Darden had no relationship to Parsons, no contact with
11 Parsons, didn't know who he was. That was a Briscoe thing.
12 That was a Briscoe forgery. That was a Briscoe conspiracy, not
13 a Darden conspiracy.

14 But I get it, they're going to say, well, you know
15 Briscoe, you texted Briscoe. That must mean you're guilty.
16 And they're going to try to say, I think, when I sit down, the
17 aided and abetting part. Well, he helped it happen. No.
18 Again, that material inducement part that they keep talking
19 about for this one is the forged contracts that our client had
20 zero to do with.

21 Thus. Put a "thus" there because our client did not
22 participate in obtaining a forged document, did not provide
23 Parsons with a forged document, was not in any contact or
24 relationship with Parsons and didn't help Briscoe induce
25 Parsons to do anything related to this forged contract.

OA3JDAR2

Summation - Mr. Donaldson

1 One more thing. Where is Parsons? Anybody can call a
2 witness. You're going to hear that instruction. Anybody can
3 call a witness. It's not our burden to prove. Where is the
4 NBA player that was trying to give \$1 million to an undrafted
5 player only after said player signed a player contract that
6 says he lost a million dollars? Where is that guy? They
7 brought in Issa Rae. They brought in James Wiseman. They
8 brought in Dwight Howard. They brought in COOs. They brought
9 in some wonderful COO from Spelman College, marvelous woman.
10 They brought in all kinds of people.

11 Where is the guy that lost the \$1 million for saying
12 he was trying to sign an undrafted player while he was an NBA
13 player and signed to an agency? Where is that guy? Questions
14 abound.

15 Dwight Howard. We're going to talk about Dwight
16 Howard. And I'm sorry I'm going to take up some of your time,
17 but I got to take up some of your time. Who did you mainly
18 talk to about buying the Atlanta Dream? Dwight Howard, Charles
19 Briscoe. They need Briscoe. When I say "they," the government
20 needs Briscoe. This is my first time with Cal and this Dream
21 thing. That's what he said during his direct testimony. It's
22 my first time. He brought them to the thing, and Briscoe
23 brought him to me and it's my first time meeting Cal, hearing
24 about Cal, my first time.

25 Excuse me. Cross coming next. I read the stuff.

OA3JDAR2

Summation - Mr. Donaldson

1 Guess what? Scroll back up higher. What did he say several
2 days before, two weeks before this Dream thing even came up?
3 Who's chatting again? Briscoe and who? Dwight Howard. What
4 are they talking about? Some new league. What are they
5 talking about? \$30,000.

6 What are they talking about? What does Briscoe say?
7 Yo, I'm going to talk to Cal about that new league we're
8 talking about. Dwight, you just said first time y'all was
9 doing business with the Dream, I don't know what that is.
10 Memory start going crazy.

11 The judge is going to tell you about credibility.
12 Memory starts going crazy. I guess Briscoe just dropped Cal
13 out the sky. Everybody in this courtroom was calling Calvin
14 Darden "Cal," everybody. Cal, Cal, Cal. Now we got a text
15 message between Briscoe and Howard talking about Cal several
16 weeks before the Dream. And all of a sudden, nobody knows who
17 Cal is. It's called convenience.

18 And one wonders why we didn't bring that up. I tell
19 you why. Because it directly affects his credibility. He is -
20 I hate to say it. I know it's not a good thing to say in
21 courthouses, but I'm sorry. I told you I'm going to take you
22 down a road. You're not going to want to go with me, but I'm
23 taking you anyway. Howard got on that stand and the
24 misdirection, the misleading, the oh, my God, I'm a dumb
25 athlete. No, bro. Stop.

OA3JDAR2

Summation - Mr. Donaldson

1 We talked about Cal several weeks ago before this
2 Dream and production companies and leagues and things like
3 that. You did that. They can't get up here and say, well, the
4 Briscoe/Howard text messages are showing what happened except
5 for when it shows what they don't want it to see. No, no.
6 Bring it all in.

7 I wanted to buy the Dream to help out the women.
8 That's what he said on direct. I was all for the women.
9 That's why I wanted to do it. I'm a big fan. My mother's a
10 fan. I like helping out ladies and ladies' sports. So do I.
11 That's all I was thinking about was helping out women. Okay,
12 sounds good. Made y'all love him. It's a beautiful thing.

13 But it's not true. But it's not true. He's telling
14 y'all things so that you can like him, so you can believe he's
15 a victim. But that wasn't true. How do we know it wasn't
16 true? Because go back to the text messages that we presented
17 to him that they're not telling you about again. You saw them.

18 The first ones, the first day that he was talking
19 about buying the Dream, the very first day, him and Briscoe,
20 the only thing they talked about that was a motivation for
21 buying the Dream was how much money they could make, nothing
22 else. Not a single text message about any helping women,
23 helping ladies, helping girls, helping ladies' sports, none of
24 that. That's what he told you all last week.

25 But on the text messages when he thinks nobody's

OA3JDAR2

Summation - Mr. Donaldson

1 watching, he talked about what he really wanted to talk about,
2 money, trying to get money. How to get the WNBA to make some
3 money. How he can make money off the WNBA. They talked about
4 budgets. They talked about financing. They talked about how
5 much team owners make. They talked about everything except
6 what he told you all was his motivation.

7 Now, you don't want to hear that. No. Why is that
8 important? Because when you get up on that stand and raise
9 your hand and say, I'm telling the truth about what happened,
10 what was in my mind, what I was thinking, be honest or you'll
11 get caught like he did.

12 They need Briscoe. They need Briscoe. Why do they
13 need Briscoe? Because literally about 40 percent of that
14 summation that I heard this morning was about what Briscoe
15 thought and what somebody thought Briscoe thought and what
16 somebody felt Briscoe said and how they believe Briscoe meant
17 this. We must have had 17 interpretations of what is going on
18 in Briscoe's mind.

19 That's what they're trying to convict my client off
20 of, what someone else thinks that Briscoe thought when Briscoe
21 said whatever he said. Let that settle for a second, and ask
22 yourself whether or not that's sufficient that you think that
23 you want to convict somebody on. I want to convict Mr. Darden
24 based upon what somebody thought Briscoe was thinking when
25 Briscoe said what he said. That's tough.

OA3JDAR2

Summation - Mr. Donaldson

1 My agent does everything for me, everything for me.
2 Literally got up there and start literally assuming the
3 shut-up-and-play mode, which most of us are trying to avoid,
4 got up there and just said all that because that's the only way
5 it makes sense because your common sense in a second is going
6 to take you someplace else.

7 That's what he needed you -- I am a victim, I don't
8 know anything. I'm dumb. I don't read contracts. I've been
9 in the league for 18 years. I've been in nine different teams.
10 I've signed almost a dozen different contracts with my
11 signature on it. I'm a multiple-time All Star, NBA champion
12 Olympic champion. But oh, I'm sorry, I'm a NBA basketball
13 player. I don't read contracts. Most of my colleagues, we
14 don't read contracts. What? This ain't 1910.

15 What? No. But don't worry did it. I'm going to
16 prove it to you because that doesn't make sense. I'm going to
17 tell you why it doesn't make sense. Because you can't get up
18 here and say, I'm dumb, I don't read contracts, I let my agent
19 tell me whatever I'm supposed to be doing, but then at the same
20 time tell you good people that I am buying a WNBA team, I'm
21 going to be the owner of a WNBA team, and I'm going to run this
22 team.

23 Wait a minute, bro. Wait a minute, bro. You don't
24 read contracts. Your agent tells you what to do. You don't
25 tie your shoes by yourself. You don't do anything, but now you

OA3JDAR2

Summation - Mr. Donaldson

1 expect the jury to believe, oh, I thought I was buying a
2 professional sports organization and I was going to run it from
3 behind the scenes and y'all need to believe that because I'm
4 saying that?

5 So when I just said, I'm dumb and I don't do anything
6 by myself, forget that. For these purposes I'm smart. I'm
7 going to buy this WNBA team and run it from the background and
8 take care of all the decisions, the hiring, the firing, the HR.
9 I'm doing all that because I'm smart. But when it comes to
10 reading my contracts, I don't do that because I'm dumb.

11 Yeah, common sense part time now. How does that make
12 sense? I mean, you can believe it if you want to. But I'm
13 kind of thinking in your common sense daily routines, if
14 somebody said that outside this courthouse, if you were sitting
15 outside on the street walking down the block or in your house
16 and somebody said that to you, you'd be like, stop, don't
17 change it now.

18 I think the judge said bring your common sense into
19 the courtroom, let it snuggle with you in the chair, wrap it
20 around you like a blanket.

21 But guess what we had? Mr. Wiseman come in here fresh
22 out of high school, went to the NBA. And guess what
23 Mr. Wiseman told you? I am my own man. Because you know what?
24 That's what basketball players are in the NBA these days. They
25 are their own man.

OA3JDAR2

Summation - Mr. Donaldson

1 So that nonsense Mr. Howard was telling you, stop.
2 Because Wiseman same thing, straight out of high school went to
3 the NBA, and guess what he told you? I am my own man.
4 Government tried to ask him a question. You did what the
5 agents tell you to do, right? No, heck no. What? Are you
6 crazy?

7 So while Howard was trying to make that seem normal,
8 he wanted you all to think that NBA players are just these dumb
9 jocks. Then they brought Wiseman in here and he said no, no,
10 no, no, no, no, no, no. We don't do that. We don't do that.
11 I am my own man. Really glad to hear that brother say that.
12 But let's keep going.

13 Lack of evidence. Judge is going to talk about that.
14 He's going to say lack of evidence. If you have a lack of
15 evidence, that could mean not guilty. Why is there a lack of
16 evidence? Let's see. Questions you need to ask yourself to
17 help you with that lack of evidence analysis.

18 Find me a conversation anywhere, and I mean go through
19 9,000 text messages, 6,000 emails, I think it was 542 documents
20 from Schmidt. Go through all of them. Find me a conversation
21 between Briscoe and Howard about a \$7 million purchase for the
22 Dream. Find it. You're not. What you're going to have to
23 base it on is the government telling you.

24 Find me any conversation between Briscoe and Howard
25 about 7 million for purchasing the Dream. That's his agent.

OA3JDAR2

Summation - Mr. Donaldson

1 They talked about everything else, according to Howard. I
2 think he said we talked almost every day all the time, I talk
3 to my agent all the time. Find that text message. Locate it
4 where Briscoe and Howard are discussing purchasing the Dream
5 with the Darden Group for \$7 million, which is why we're here.

6 You're not going to find that. Why are you not going
7 to find that? Because it didn't happen. Why didn't it happen?
8 Because that's not what Howard was doing. Keep going.

9 Any conversations between Briscoe and my client about
10 \$7 million for the Dream is not going to be there. Any
11 evidence indicating the convertible - emphasis - convertible
12 promissory note that they spent about two minutes talking about
13 is fake or not actually signed by Howard.

14 Like signing my name at the end of a contract agreeing
15 to the terms of the contract. That's what adults do.
16 Professionals do. That's what owners of NBA or professional
17 sports organizations do. They sign lots of contracts, unless
18 you're Dwight Howard where you don't sign a contract, or if you
19 do sign a contract, you don't read them. But that didn't
20 happen here.

21 Better question, 3 million versus 7 million. They
22 didn't talk about that either. When in the July to January
23 process did it go from 3 million to 7 million to Dwight Howard?
24 When did in that process? It didn't happen. It was 3 million
25 in the LOI in July. It was 3.5 million in the LOI in December.

OA3JDAR2

Summation - Mr. Donaldson

1 In never was 7 million. Never was 7 million.

2 That's a problem for them. It never was 7 million.

3 Heck, if they had offered Brock \$7 million, he would have sold

4 that team a long time ago. It was never 7 million. The

5 7 million was for something else that's in the promissory note.

6 That's the 7 million. Not for any Dream, never 7 million. The

7 devil's in the details. Find someplace, anywhere, where Howard

8 told by Brock or anybody that the Dream is going for \$7 million

9 now to the Darden Group and you can get in on it. That didn't

10 happen.

11 Better second question, isn't there enough evidence to

12 prove that Briscoe was lying to Howard and Parsons about what

13 Darden was saying and doing? They asked Howard that question.

14 Do you know what Darden was doing? Howard tells you, I don't

15 know. I have to go by what Briscoe says. Now we know that

16 Howard only knows what the Dardens are doing based upon what

17 Briscoe was telling him.

18 But the problem with that is that you'd have to

19 believe Briscoe, who is a known liar, is telling Howard and

20 Parsons the truth. That's the only way you can go from point A

21 to point C. You got to believe point B, which is that Briscoe

22 is telling the truth to Howard. Problem is Briscoe ain't here.

23 That's why I said they need Briscoe.

24 Second problem is Briscoe is a liar. So how do you

25 get from point A to point C when point B is just a big gulf?

OA3JDAR2

Summation - Mr. Donaldson

1 They want you to convict this man, and if I'm being honest,
2 because of his prior convictions. They were led by the fact
3 that he had prior convictions. Heard he had prior convictions,
4 and just went that way, didn't go left, didn't go right. He
5 got prior convictions. This is happening, it must be fraud.

6 That's why we're really here because they went
7 straight and forgot to look left and look right. They went
8 straight in relying on Briscoe. Guesswork, speculation does
9 not equal guilt. But there's more. There's a civil lawsuit
10 filed - dates are important - filed in August of 2023. Please
11 remember that date. The lawsuit was filed in August of 2023.

12 Question from the judge, actually, do you -- well,
13 what is the lawsuit about? Breach of contract. Judge, do you
14 recall whether you said in the lawsuit that you did not say
15 or --

16 MR. MEAD: Objection, your Honor. The third bullet
17 point from the bottom, the document is not in evidence.

18 THE COURT: Yes.

19 MR. DONALDSON: Okay.

20 Do you recall in your lawsuit whether or not you said
21 that you lost \$7 million because of them not purchasing the
22 Dream? It was a simple question. The lawsuit was sitting on
23 that screen right in front of him.

24 MR. MEAD: Objection, your Honor.

25 THE COURT: Sustained.

OA3JDAR2

Summation - Mr. Donaldson

1 MR. DONALDSON: Okay.

2 THE COURT: Not okay. The document was never in
3 evidence, all right?

4 MR. DONALDSON: Yes, sir.

5 Do you recall that being in the lawsuit? Answer, I
6 don't recall.

7 The reason for the lawsuit, the reason why he's
8 claiming that he lost money, the significant element, the
9 significant factor, the significant point of why he claims he's
10 here is because he claims he lost \$7 million related to the
11 dream. A lawsuit is filed in August of 2023, and he doesn't
12 recall whether or not it has the Dream in it. How does that
13 make sense? It doesn't. It makes zero sense. It goes to the
14 credibility part that you're going to hear from the judge,
15 whether or not it appears that the witnesses are being evasive.

16 You can answer that question yourself. And again, I'm
17 saying use your common sense. Go back to what you did before
18 you became jurors. Use your common sense in your daily life
19 experiences. Lawsuit related to XYZ. Sir, is the lawsuit
20 related to the dream and the \$7 million? I don't know.

21 Vision plan that we had so much testimony about, that
22 we talked about for every witness, in every witness. Why do we
23 talk about it? Because it was important. Why was it
24 important? Because it's their belief - "they" being the
25 government - that that's the material inducement for the money.

OA3JDAR2

Summation - Mr. Donaldson

1 It's their belief that Howard sent the money based upon the
2 vision plan. That's the material part that they're talking
3 about. It's their belief that Brock called this material and
4 important.

5 So was the vision plan material is the question.
6 Let's go to the details. First of all, it is indisputable --
7 I'm going to keep using this word -- it is indisputable that
8 that vision plan was the result of -- it was a combination of
9 all of their input. Literally, Sienko and Brock literally sent
10 back multiple emails providing suggestions and what to put in
11 the vision plan. Literally.

12 And what did Darden say in the response? I have
13 incorporated your suggestions. I have put your recommendations
14 in the vision plan. Check this out now. Almost like a group
15 effort. Now they want you to say, well, this vision plan that
16 appears to be the result of a combined effort is the fraud part
17 because of the advisory board part and the corporation part
18 that we're not running away from.

19 We don't care if you brought Issa Rae and a
20 representative for Osaka and somebody from Tyler Perry and, you
21 know, Ms. Brewer. Wonderful. I mean, should have brought in
22 Chandler Parsons, but I get it. But it doesn't matter because
23 it was not material to Dwight Howard and it was not material to
24 Brock.

25 How do we know? July 2020, Howard. Let's talk about

OA3JDAR2

Summation - Mr. Donaldson

1 Howard first. He told you he was almost hellbent on buying the
2 Dream before he even got a vision plan. The vision plan was
3 not what made him want to buy the Dream. First, he said it was
4 his love for women and women's sports. Then we showed him it
5 was his desire to get the money and make money from him.

6 But in any event, what he wanted to buy the Dream for
7 had nothing to do with a vision plan. He took affirmative
8 steps to buy the Dream without a vision plan. He did.

9 July 2020, he had meetings. He had Zoom calls. He called
10 people. He met with his agent. He met with -- he was on Zoom
11 calls with the WNBA and Dream. He took affirmative steps to
12 take the Dream then without the vision board.

13 It wasn't until around August or September when he was
14 told he couldn't that he stopped. How else do we know? He
15 received documents. He received lots of documents, financial
16 documents from the Dream, to purchase the Dream. No vision
17 board stuff at that time. So we know for a fact it's an
18 indisputable fact that he was trying to buy the Dream, had
19 intentions to buy the Dream, wanted to buy the Dream, took
20 affirmative steps to buy the Dream without ever seeing a vision
21 board.

22 Howard sent \$7 million. Their claim is because of the
23 vision board. No, it wasn't. As we said, he wanted to buy the
24 Dream back in July and August. He sent the money in November.
25 He couldn't buy the Dream between August and whenever because

OA3JDAR2

Summation - Mr. Donaldson

1 they told him he couldn't. But another opportunity arose to
2 make more money. The \$7 million was sent after the promissory
3 note was signed by Howard.

4 The promissory note that he signed, he told you he
5 signed, was the inducement for the \$7 million, not the vision
6 plan. And that's what the evidence shows. He got the
7 promissory note, he signed the promissory note. He then sent
8 the \$7 million on the basis of the promissory note, not because
9 of the vision plan.

10 Brock. Query. Was the vision plan material for him
11 to do whatever they claim he was doing based upon that?
12 Absolutely not. Yes, he helped. Yes, he told y'all the vision
13 plan was important to me. The advisory board was very
14 important to me. The corporate part was very important to me.
15 Was that material to him making a decision? Absolutely not.

16 How do we know that? He's been trying to sell the
17 Dream since January. He wanted to get the most money possible.
18 To him this was about getting money. Vision plan, not
19 material. How do we know? He didn't check it out. He called
20 one person, Franklin, and she said, I'm in. He knew Darden,
21 Sr. for at least 10, 15 years.

22 What did he say to you about Franklin and Darden?
23 They are significantly positive. How do we know again that the
24 vision board or plan was not material to the Darden Group
25 getting the deal? Because he told you. Northland. He told

OA3JDAR2

Summation - Mr. Donaldson

1 you he did. He fact checked them. He fact checked them. He
2 fact checked them.

3 Did he fact check the Darden Group? No. Because he
4 didn't care about the vision plan with the Darden Group. But
5 when the other group called, he fact checked them. He said he
6 checked the people they were involved with. He checked the
7 people who knew them. He checked what kind of business they
8 were doing. He checked everything about them. But when it
9 came to the Darden Group, he didn't check that. Why? Because
10 it wasn't important. But that's not it.

11 They had a January 9, 2021 call, Brock and Darden,
12 before the January 10 Zoom call about the sale of the Dream.
13 Why is that important? Because on January 10, we had a new
14 person in the room, we had Loeffler's husband. Never was he a
15 part of the interactions with the Darden Group or the Howard
16 group. Now we have the husband of one of the owners. That's
17 an important step.

18 So what did they do? They had a call before that to
19 talk about that, Brock and Darden, Jr. Not one single iota of
20 conversation was about the advisory board, how great it is.
21 How that's the one that's going to bring you all up. Not one
22 single thing about the corporations, the corporate sponsors,
23 how that's important to the Dream, and that's the one that's
24 setting y'all apart. Not one single conversation about that.
25 Why? Because it wasn't important. But keep going.

OA3JDAR2

Summation - Mr. Donaldson

1 Question, page 169, and that's why at the time, by
2 December 8, 2020, the Darden Group was the leading group,
3 correct? Answer, correct. Question, with that 3 million in
4 the letter of intent, correct? Answer, yes.

5 The money was material, not the vision board for
6 Brock. But keep going.

7 12/8 email saying Darden in top group and why others
8 are being dropped out - no mention again of any vision board.
9 Even after putting all their suggestions in there, nothing
10 about advisory board or corporations. That wasn't important to
11 Mr. Brock.

12 What caused the sale of the Dream? \$17 million,
13 7 million in cash plus 10 million in debt. That was what was
14 important to Mr. Brock, not the vision board, not the advisory
15 group, not corporations, none of that matters. What mattered
16 was who is going to give them the most money, and the persons
17 that brought them the most money got the sale.

18 And he said it on page 185, to make sure you clearly
19 have it, he said to you all what was important to him, what was
20 material to them, he told you what was material. Price, the
21 money part, and certainty of closing the deal, meaning the deal
22 is going to happen. That is what is important to Mr. Brock,
23 not the vision board.

24 Vision plan versus letters of intent. Why is that
25 important? Because the July letter of intent, in fact, Brock

OA3JDAR2

Summation - Mr. Donaldson

1 indicated that he okayed it being electronically signed. Why
2 was that important? Why is that important? Because it was
3 electronically signed. Unlike Briscoe with Wiseman, there is
4 nothing here saying that our client did something forged or
5 anything else untoward with those electronically signed
6 signatures, nothing.

7 Why? Because, like I said earlier, when he said from
8 the beginning, I'm a felon, when he was bringing his father or
9 his father was going with him to different Zoom calls, when he
10 was on different Zoom meetings, when he was at different calls,
11 when they were attending things together to be a part of
12 purchasing the Dream, it appears from the evidence that he was
13 doing everything he could not to do anything fraudulent, not to
14 appear to be fraudulent. That's what the evidence shows.

15 January letter of intent, again electronically signed,
16 provided to the WNBA. Unlike Briscoe, again, there is no
17 evidence that Mr. Darden did anything untoward with these
18 signatures, nothing.

19 There's a difference between the letter of intent and
20 the vision plan. When they got up here during the case and
21 said, well, you see where it has Darden, Sr., Franklin, and
22 Baltimore? That's important. No, it's not. Well, it's
23 important because the letter of intent that came after that did
24 not have Baltimore's name on it. Why? Because she didn't want
25 to be owner. They took her name off, and they sent them the

OA3JDAR2

Summation - Mr. Donaldson

1 letter of intent with the actual owner group, Franklin and
2 Darden, Sr. There's a reason why there are no emails or any
3 exchanges to Baltimore because she wasn't part of the ownership
4 group.

5 The letter of intent indicates that. Brock admitted
6 that. Brock told you that. He told you the letters of intent
7 is the official documents between the parties negotiating, not
8 this vision board or vision plan or whatever you want to call
9 it, not the vision. Definition of "vision" means future, what
10 you hope to do. But I guess it means something else today.

11 But the letter of intent with the names on it, with
12 the emails exchanged from the ownership of the WNBA and the
13 Dream with Ms. Franklin and Mr. Darden, Sr. and Mr. Darden,
14 Jr., that's the official communications between the parties to
15 sell the Dream or to purchase the Dream.

16 That's why the January 2010 zoom was important.
17 Because on that Zoom and other Zooms, Ms. Franklin was invited
18 as well. Mr. Darden, Sr. was invited as well. Mr. Darden, Jr.
19 was invited as well. Mr. Brock was invited as well. And they
20 spoke on a Zoom where pictures are up and you can see people
21 talking about purchasing the Dream. That's probably why Brock
22 said that Mr. Darden, Sr. was playing an active role in the
23 purchase process because he was all over the place
24 participating, not being impersonated.

25 We talked about this, but there's no evidence at all

OA3JDAR2

Summation - Mr. Donaldson

1 that any of the LOIs were fraudulently done by Darden with the
2 purpose of buying the Dream. Now, they're going to say, no,
3 what about that February 2021, the February 15 one that the
4 government got up here and said, well, he sent that one to
5 himself? I'm going to assume they made a mistake. We
6 shouldn't assume in court, but I'm going to assume they made a
7 mistake.

8 We're going to assume they didn't say that Mr. Darden,
9 Jr. sent it to himself so that he can do things with it because
10 that wouldn't be true. Because the evidence, the emails said
11 that he sent it to his father. It went from Cal Darden, Jr.
12 email address to Cal Darden, Sr.'s address.

13 Now, again why would he be doing a fraud? That
14 wouldn't make sense. That just wouldn't make sense. And
15 there's a reason why the other -- no one else got it because it
16 wasn't supposed to go any place else. That doesn't make sense.
17 So there's absolutely not one single letter of intent -- that's
18 the official document that you exchange between the
19 negotiating -- purchasing and selling party -- that was
20 fraudulent. That material document accepted by Brock,
21 negotiated about by Brock, was absolutely, positively,
22 unequivocally a legal document by the Darden Group with the
23 Dream. That's the official documents.

24 Howard was not trying to buy the Dream with Dardens
25 after August. How do we know that? How do we know that Howard

OA3JDAR2

Summation - Mr. Donaldson

1 was not trying to buy the Dream with the Dardens after August?
2 How often did you talk directly to Mr. Darden, Jr. about buying
3 the Dream? We didn't. Page 399. How did you get an
4 understanding of what Darden, Jr. and Darden, Sr. were doing to
5 buy the Dream? Charles Briscoe. Page 399. That's why I keep
6 saying they need Briscoe.

7 Did you try and talk to them, the Dardens, about the
8 Dream when you wanted your money back? No, I tried to go
9 through Charles. They need Charles.

10 Question, if you sent \$7 million to your business
11 partners to purchase the -- I put the Dream -- to purchase
12 anything, you sent seven -- don't use \$7 million. If you sent
13 \$100, let's just go way down. If you sent \$100 to your
14 business partners to purchase anything and you claim what you
15 wanted to purchase wasn't done, does anyone here believe that
16 you don't call that person?

17 Starting out a common sense question, you give
18 somebody money to purchase something. You then find out in
19 your brain that wasn't purchased, who in this jury says, I'm
20 not going to call the person that I just gave my money to and
21 say what's up with that that I tried to purchase it? That's
22 not evidence that he's not smart. That's evidence that that
23 didn't happen. Common sense dictates that didn't happen.

24 Again, I'm just asking you the common sense road.
25 We're going down the common sense road. Common sense says if I

OA3JDAR2

Summation - Mr. Donaldson

1 give \$500 to him and in order for him to give me something, I
2 go home, I don't have it, I go back to him. That's what common
3 sense dictates unless I never went to him from the beginning.
4 But somehow we going to -- I know it, we're going to --
5 Mr. Donaldson, that's just too easy. He had to want to do
6 something else. I mean, if he was going to make something up,
7 he would've made a better story up. He just had to do
8 something else, that doesn't make sense. Exactly. Exactly.

9 And if you were any place else besides sitting in
10 those chairs, you would say to yourself, nah, come on, bro,
11 that didn't happen. Stop. What really happened? What really
12 happened, Mr. Howard? What really, really happened? Because
13 that, what you just said happened, \$7 million, gave it to
14 somebody, you claim they didn't do what they're supposed to do
15 with it and you didn't call them? You didn't what? That
16 didn't happen.

17 There's no reasonable evidence establishing a Dream
18 relationship between Howard and the Dardens. How do we know
19 that? Sienko told you. How did Sienko tell you? Because his
20 job is to communicate with purchasers, according to him.
21 Howard was out of the picture since at least August or
22 September. Who was Sienko, who was a general manager and
23 president, communicating with since at least September? He
24 said purchasers. Who are the purchasers? Dardens. Why?
25 Because everyone knew that Howard could not buy the team.

OA3JDAR2

Summation - Mr. Donaldson

1 Everyone knew that.

2 More importantly, details go back to July, go back to
3 July when Briscoe was appointed or anointed the point person,
4 spokesperson for the Howard group. Briscoe, the agent of
5 Howard, is the spokesperson for the Howard group to the WNBA
6 and the Dream.

7 Okay. So that means then if Briscoe is no longer
8 speaking to the WNBA and the Dream executives, Sienko is not
9 speaking to Briscoe since August. Guess what that means? Two
10 plus two is four, generally. That means then that Howard is
11 not in the group to buy the Dream. So all this stuff he's
12 telling you I was trying to buy the Dream with my \$7 million is
13 not true again, as evidenced by the details.

14 This is what we know. July 2020, Briscoe is Howard's
15 agent. We went through it. He was the spokesperson. He is no
16 longer the spokesperson. Now Darden, Jr. is the spokesperson
17 for the Darden Group because the Darden Group is purchasing the
18 Dream, not the Howard group. And outside of Howard's, I now
19 want my money back text, there is no objective evidence that
20 Howard is still trying to buy the Dream, zero.

21 There is zero objective evidence in this case that
22 after September that Howard was trying to buy the Dream with
23 the Dardens, zero. Feel free, look at every transcript page,
24 every line, evidence, text messages, emails, whatever you want
25 to look at, it's not there. Why? Because it didn't happen.

OA3JDAR2

Summation - Mr. Donaldson

Howard was told that he could have no ownership interest in the Dream including behind the scenes. This is the bad part because NBA told Brock that an agent could not own the team. It's on page 155. The NBA told Brock that Howard could not purchase the team. NBA told Brock that Howard could not be a member of the purchasing group and then own it at some point later. The NBA told Brock that – and this is the next part in red – all of the above was communicated by the WNBA executives to Briscoe, Brock, and Howard, page 155.

Here's that common sense road that you're not going to like now because Brock literally told you that the NBA told Howard that he could not be a member of the purchasing group and then own it at some point.

Now, this is a problem now because Howard is telling you that I want to be a part of the purchasing group and own it from the back. Well, now we got a problem because they're going to tell you disregard what Brock said. They have to. They have to tell you to disregard that because if they don't tell you that and you take that for truth that Howard was told that as well, and then you take Howard for truth that he did exactly what he was told he could not do, now we got a problem.

Now we got a problem. We got a problem. That means that Howard was doing something that he knew he could not do related to the WNBA if you believe Howard. If you believe Brock, pick one. Take your pick. This kind of destroys their

OA3JDAR2

Summation - Mr. Donaldson

1 whole case though, kind of destroys the whole theory. The
2 whole theory now is kind of imploded because Brock is their
3 witness. He's the guy. Howard is their witness. He's the
4 guy. But now they're testifying about two materially different
5 things that are extremely important. Now what? Let you think
6 about that.

7 Darden Group legitimately tried to buy the Dream,
8 legitimately. How do we know that? Howard and Briscoe
9 recruited Darden to this process. Let's be clear about that.
10 Darden didn't come into the process and say, hey, let me try to
11 figure out a way to defraud these people. That didn't happen.
12 They called him into the process. Based upon the government's
13 evidence, they called him into the process. Now they're saying
14 that he defrauded them. Okay. We already know there are no
15 more calls between Howard and WNBA after a certain time period.
16 We know that. But there are many emails between Darden and
17 Dream executives between August 2020 and 2021, specifically
18 trying to buy the Dream.

19 We know that there were in-person meetings with Dream
20 executives, specifically trying to buy the Dream. We know that
21 there were Zoom calls between both Dardens, WNBA executives,
22 Dream executives, everybody specifically trying to buy the
23 Dream.

24 We know that - that's the big one - we know that the
25 Darden Group actually offered to give money into escrow to buy

OA3JDAR2

Summation - Mr. Donaldson

1 the Dream. These are called good-faith legitimate efforts to
2 buy the Dream. Why? Because Mr. Darden, Jr., as the evidence
3 has lining up more and more, is doing everything he can not to
4 appear to commit fraud because he has that record.

5 That's why I said at the beginning that was important.
6 I'm telling you up front I have a felony conviction. I'm
7 telling you up front I have a prior. I'm telling you that up
8 front so that everything is out on the table. There is no
9 secrets here. That's why everything they did was clearly
10 legitimate, as opposed to what you now know happened or may
11 have happened, somebody claiming to buy a WNBA team and be
12 behind the scenes when they know they're not supposed to.

13 That side doing it legitimately or trying to, another
14 side based upon some evidence might be trying to do it in
15 illegitimate ways. But somehow we want to convict that side.
16 Literally offered to place money into escrow. Brock, first he
17 said, I said no. But then we checked, no, Brock, look at what
18 you said in the emails. Oh, yes, I said it was a good idea. I
19 told him escrow was a great way to demonstrate commitment and
20 willingness to close, those three words again. Willingness to
21 close. Why? Because that was what was important to Mr. Brock.

22 Details, folks, details. What was important to
23 Mr. Brock he told you before? Price point, commitment to
24 close. What did he say in his email to Mr. Darden, Jr.? That
25 escrow shows a commitment and willingness to close. What was

OA3JDAR2

Summation - Mr. Donaldson

1 he interested in? Money and commitment to close. Starting to
2 add up now. Not the vision board, not the vision plan. Money,
3 willingness to close, escrow, here you go.

4 Okay. We going to think about that. That's a
5 good-faith effort. That's not illegitimate. That's not fraud.
6 That's taking affirmative, positive steps to buy the Dream the
7 right way. Brock appreciated that. How do we know that?
8 Because he wanted the Darden Group to be successful. I mean,
9 heck, he was helping them out any way he could. You're not
10 helping someone to be successful to purchase a WNBA team if you
11 think they have fraudulent intent, are you? You're not doing
12 that.

13 I mean he's COO this, COO of Coca-Cola, business
14 acumen, 40 years in this, 40 years in that. I have a wealth of
15 experience. I was the natural -- I think he said, I was the
16 natural selection to help my wife sell the team because of my
17 wealth of business experience and how much I did this and how
18 much I did that. Great. You're right. I agree.

19 So using all that stuff, your ability to vet people,
20 and knowing who is a good person, all that good stuff. That's
21 why several months between Brock and that man communicating,
22 our client and the Darden Group was resulting almost in the
23 purchase of the Dream until \$17 million came up. They want you
24 to forget about that though.

25 \$7 million, not for the Dream. We talked about this.

OA3JDAR2

Summation - Mr. Donaldson

1 There is no \$7 million anywhere, spoke about anywhere with
2 Howard. Didn't happen. How do we know? Again — and this is
3 the common sense road — but wait, I put there. But wait. Why
4 did I put "but wait"? Because Howard is supposed to told you
5 all, I was buying the Dream for \$7 million to get the Dream for
6 when I retire.

7 So I asked him that question, seemed like a crazy
8 question at the time because I asked it, like, five times, I
9 guess. But when were you going to retire? I don't know.
10 Start over. You sent \$7 million? Yes. To buy the Dream?
11 Yes. To do what? To hold it, and I will be in the background
12 behind the scenes until I retire. Okay. When do you retire?
13 I don't know. Where are you going to retire? I don't know. A
14 year later? I don't know. So you were going to just stand
15 behind the scenes and -- when? What does that mean? I don't
16 know. Okay.

17 There must have been some kind of side deal, but there
18 wasn't. There's no evidence of that. There's no evidence
19 there was a side deal, well, bro, you buy the Dream now, when
20 you retire, we'll give it to you. Think about that for a
21 second. This is the common sense part again. He's saying he
22 gave \$7 million to buy the Dream, and there's no proof of that
23 anywhere. There's no proof of that anywhere, none.

24 You can't go to Nordstrom and buy a shirt without
25 getting a receipt. You can't go down the block and buy coffee

OA3JDAR2

Summation - Mr. Donaldson

1 without getting a receipt. You can't do anything without
2 getting a receipt. He's telling you and wants you all to
3 believe this, that he gave up \$7 million to buy the Dream and
4 there's not a scintilla of proof to say that.

5 There's not a scintilla of proof to show that he's
6 supposed to get it when he retired. There's not a -- what
7 happens if he retired the next year? I want the Dream now
8 based upon what? I said I bought it for \$7 million. Where did
9 you say that? How does that make sense?

10 And again, I'm not -- it's not because we're saying,
11 oh, he's gullible and that's the -- no. We're saying that
12 doesn't make sense because that didn't happen. That's why
13 we're saying it. It didn't happen. He didn't give \$7 million
14 for the Dream.

15 (Continued on next page)

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OA3BDAR3

Summation - Mr. Donaldson

1 MR. DONALDSON: He gave \$7 million for that promissory
2 note to make money with DSG later on. That's what the
3 \$7 million is for. That's why the \$7 million went out after he
4 sign the contract. Not a second before. It went out. He
5 signed the contract, \$7 million go out. But wait, there's
6 more. He's going to be running the team from behind the
7 scenes, participating in hiring, participating in firing,
8 participating in personnel decisions while playing in the NBA.
9 I forgot to say, he also said he wasn't going to tell the WNBA
10 he's doing it. How does that make sense again? Why are you
11 keeping that a secret? Why are you not telling the WNBA that
12 you just bought the team, and you're behind the scenes? Maybe
13 because that didn't happen, or maybe because he wasn't suppose
14 to do it. Pick one. Either way it goes, it messes up their
15 theory. Take your pick, because that doesn't make any sense
16 either. The common sense road is staring to get really narrow.
17 That doesn't make any sense either. I'm buying a professional
18 sports team from a professional league, and I'm not telling
19 anyone that I did that. I'm not telling anyone that I bought
20 it. I'm telling my mother. I'm not telling anybody else.
21 That makes no sense. Because that didn't happen.

22 Government Exhibit 401-961 does not help the
23 government. It simply doesn't. They need Briscoe, or they're
24 going to be up here all day saying based upon my thoughts,
25 Briscoe meant this. What do you think Briscoe meant by that?

OA3BDAR3

Summation - Mr. Donaldson

1 Who do you think Briscoe was talking about when he said that?
2 Literally they want you to convict based upon someone
3 interpreting what someone else said. That is a scary thought
4 when you really think about it. When you really think about
5 it, that's a scary thought. This one doesn't help either. "We
6 still good on that? Yes, sir." Howard says, this is a
7 conversation about the purchase and sale of the Dream. Help me
8 understand that. Help yourself understand that. Howard, We
9 still good on that? Briscoe, Yes, sir. Howard, what does that
10 mean? This conversation is about us talking about the Dream
11 and about me buying the Dream, them selling the Dream and
12 everything about the Dream. Really.

13 Dumb question. I'll ask it. If you're texting
14 somebody back and forth, they're your agent, somebody who he
15 says he trust. I trust him with my life. I trust him with my
16 decisions. He does everything for me. You're talking to him
17 naturally. You're not hiding words. You're not concealing
18 words. You're just talking naturally. You don't think
19 anybody's listening to your calls or surveilling your text
20 messages. You're just talking. How in God's name does that
21 mean what he said? "We still good on that? Yes, sir." I mean,
22 something behind it, something. How does that mean that?

23 In order for this to make sense from their
24 perspective, from the government's perspective, you have to go
25 with what Brock said, which means that Brock told you all that

OA3BDAR3

Summation - Mr. Donaldson

1 Howard knew he could not buy a team and be part of a group and
2 be in the background. Brock told you that the WNBA told
3 Briscoe, Brock and Howard that. So now, the only way this
4 makes sense from their perspective, the only way it makes sense
5 from the government's perspective is that that's what happened,
6 that he actually did that in violation of what the WNBA told
7 him not to do, which kind of makes sense now, because maybe
8 that's why he was saying, I'm not telling the WNBA. There goes
9 that common sense road now.

10 So now we're saying that -- walk with me -- that I
11 didn't tell the WNBA that I bought it. Why? Because Brock
12 told you all that the WNBA said I couldn't do that. What did
13 you do? I did it any way. Really? You don't want to believe
14 that because you know that would mean that he is committing
15 some kind of whatever you want to call it. So got to go back
16 to the other one. If he's not doing that, because God knows he
17 wouldn't do that, that means the money couldn't be for the
18 Dream. You see the problem? You don't want to say, they don't
19 want you to say that he took the money and used it for the
20 Dream when he was told by the WNBA he can't do that. Okay.
21 So, fine. He didn't do that then. He didn't commit fraud. He
22 didn't do something violating agreements. He didn't do that.
23 So now the question is, if he didn't do that, what was the
24 money for? The promissory note, which is what he signed, which
25 is why he's starting to say, I didn't sign it. I told you he

OA3BDAR3

Summation - Mr. Donaldson

1 wasn't going to wanna walk down this road with me because I'm
2 going to tell it to you.

3 Promissory note. I think it's Government Exhibit
4 2407. I put in red here, read, review repeat. Why did I say
5 that? You get to take the evidence. You get to look at it.
6 Read, review, repeat. They say if you say things in threes you
7 remember it more. Read, review, repeat, or repeat, review,
8 read. However you want to use the three "R"s, but feel free to
9 go through it. There's no scheme to obtain money from BMO
10 using material false representations. There's nothing outside
11 that contract that manifest itself as fraud, that makes this,
12 the providing of that money fraudulent. There's nothing there.
13 You can ask it all day. We just went through it. Either he
14 gave the money and he's buying a team and working behind the
15 scenes, which we know he's not supposed to do, not going to
16 admit that. So that must mean he gave the money for something
17 else, which is what he did. Civil complaint filing. I'll get
18 back to that. Why is that important for the promissory note?
19 Because in his civil complaint, he admitted that he alleged a
20 breach of contract. What was the contract that you're saying
21 was breached? The promissory note. It's on page 459. He
22 alleged somehow he remembers that part of the civil complaint,
23 but we'll talk about that later. He alleges that there was a
24 contract breached. What contract was breached?

25 MR. MEAD: Objection, your Honor, to this line on a

OA3BDAR3

Summation - Mr. Donaldson

document that's not in evidence.

THE COURT: Ladies and gentlemen, we're now, as I said, in counsel's arguments. The issue of the contract was not -- excuse me, the complaint was not admitted in evidence, but there was testimony about it. Your recollection of the testimony is what controls. All right. Go ahead.

MR. DONALDSON: Thank you, Judge. My apologies. So we're on page 459 of the testimony. Mr. Howard indicated that the contract in the civil complaint that was the subject of the breach was the promissory note. He didn't say that, you know, it was an unenforceable contract. He didn't say that it was a fraudulent contract. He said that the promissory note was breached. They're going to say that he didn't read it, the promissory note. Oh, my God. Mr. Briscoe is my agent. He does everything for me. I don't know what to do. I can't tie my shoes. I have to wait until he calls me to use whatever. I don't know what's going on, Mr. Donaldson. I don't know.

Stop. Second line. Well, first line first. Convertible note was discussed days before the money was wired. Check. Then this promissory note was emailed to Howard a couple of days prior to the signing of the contract. Stop for a second. Why is your agent emailing you the contract several days before? The common sense answer to that is, so that I can read it. What other reason would there be to email the contract to you several days before? I know some of y'all

OA3BDAR3

Summation - Mr. Donaldson

1 like, maybe he just got it so he could look at it, put it on
2 his wall, put a thumbtack in it. But that wouldn't be common
3 sense. When someone emails you something you keep for several
4 days. You are doing what? You're reading it. That's the
5 purpose of giving it to you for several days. That kind of
6 makes sense. Then he personally signs it several days later,
7 not electronically signed, not someone signs it for him, not
8 his cousin comes over and signs it. He signs it. What's
9 remarkable about this is that he also signs his NBA contract
10 for that year a few days later. But again, he's going to tell
11 you, I don't read these things. It just so happen to be ironic
12 that he did that. It wasn't ironic. He does read his
13 contracts. He read this one before he signed it. That's why
14 it was given to him several days before. But wait, he wants
15 you to believe that he gave \$7 million without reading a
16 contract. I get it. That's what he told y'all because he
17 never reads any of his NBA contracts. I get it. That's what he
18 told y'all. He wants y'all to believe, I'm just a basketball
19 player.

20 Okay. This is the problem. The ones that give him
21 money, the NBA contracts, I don't read those. Why? This is
22 the big one. Because he and the government, government ask the
23 question. Well, this is a standard contract, right,
24 Mr. Howard. Yes, it is. This is the same contract that you
25 always sign? Yes, it is. So therefore because it's standard,

OA3BDAR3

Summation - Mr. Donaldson

1 ah ah ah, I just go ahead and sign it. Yes, it's standard. It
2 says the same thing. It makes sense to you guys. Fine. I get
3 it. This is the problem with that. According to Schmidt, this
4 promissory note is not a standard contract. This is not a
5 standard contract. This is different than any NBA contract.
6 This is a convertible promissory note, so this is not standard.
7 So your justification for not reading NBA contracts and just
8 signing them doesn't apply here.

9 Now what? Also important in this contract, he is
10 giving \$7 million away. And the NBA contracts, he's receiving
11 money. So we go back to the common sense part. We have a
12 nonstandard contract and you are giving \$7 million which is
13 significantly different than any of the NBA contracts. And
14 their belief is to tell you, he didn't read it, that he had it
15 for several days. Now go back to it again. The justification
16 for not reading standard contract. Okay, is this standard?
17 No. Okay, well that killed that justification. NBA contract.
18 I sign a contract and they give me my money. Okay. Fine. You
19 get money. What are you doing in this one? I'm giving away
20 \$7 million. Okay. Now they'll differ again. So your
21 justifications that you claim you have for not reading
22 contracts do not exist in this case which is why he got the
23 contract several days before so that he could read it
24 understand it, sign it, and then send the money off, which is
25 what he did. Common sense lane.

OA3BDAR3

Summation - Mr. Donaldson

1 Irony of bounds. Why is irony of bound? Because I
2 like listening to things unfortunately. And during the direct
3 of the agent about the multiple banking contracts and the bank
4 statements and all that stuff, focus was placed on a top part
5 of a contract. This is what it says: You agree to be bound by
6 X, Y, Z, signed by -- they put a big highlighted signed by
7 Calvin Darden. Why? So they could show you that Mr. Darden
8 had a contract that said you are bound by X,Y,Z. And because
9 you signed it, you are bound by the provision. Okay. I get
10 it.

11 So for Mr. Darden for their purposes, for prosecution
12 purposes, if a person signs a contract that has the language in
13 it that you read it, then you're bound by it. But for
14 prosecution purposes for their own witness, contract, bound by
15 it, signed it, he's not bound by that. Irony of bounds. So
16 for their witnesses against Mr. Darden, he signed a contract,
17 that must mean you read it. It's against you. For Howard,
18 same thing. Sign the contract, same provision. No way, he
19 didn't read it. Doesn't work like that for him. We call
20 that -- my son calls that ironic. He says ironical. It's not
21 irony. It's something else.

22 Title of the promissory note. Can you put that up,
23 the promissory note 2407. The title of the promissory note is
24 important. We're going to go through it just for a quick
25 second, and I want you to read, review, and repeat that

OA3BDAR3

Summation - Mr. Donaldson

1 promissory note. Just read it. Just go through it. But for
2 right now the title of it is important because they mention in
3 their case zero funds was in the account before the \$7 million.
4 That makes sense because the title of it says, financing of
5 Darden Sports Group, financing of the Darden Sports Group,
6 putting money into the Darden Sports Group. That's literally
7 what it says. It literally says at the top, financing of the
8 Darden Sports Group, means putting money into the Darden Sports
9 Group. It literally says that. The money is to finance the
10 group, finance the company. That's literally what it says. So
11 he might be upset that he wants his money back, but that's what
12 the contract says.

13 Use of proceeds section. It clearly says it was not
14 suppose to be used for the Dream. Schmidt said it was not
15 suppose to be used for the Dream. Said another way, the
16 promissory note signed by Howard was not supposed to be used
17 for the Dream. That's what Schmidt said. That's what the
18 contract says. That's what he signed says. So if he comes in
19 here now and says, listen, I gave the money for the Dream, but
20 the contract says it wasn't for the Dream and you signed it,
21 what now? Did he get his money back? Better question is, was
22 he suppose to? Where in this promissory note does it say you
23 get your money back? Where in the agreement does it say you
24 get your money back? What it does say is that he takes an
25 equity in Darden Enterprises at the end of the maturity period.

OA3BDAR3

Summation - Mr. Donaldson

1 It converts at the end of the maturity period. November 2023
2 is when the maturity period ended. My client was arrested in
3 March 2023. He got sued in August 2023.

4 MR. MEAD: Your Honor, objection to the third bullet
5 point on the bottom. I'm not aware of any evidence on that
6 point.

7 THE COURT: I'm sorry.

8 MR. DONALDSON: I just moved it just in case. I
9 didn't want to leave it there.

10 THE COURT: Hold on. Let me find it. What page is
11 this? Ladies and gentlemen, as I mentioned, summations by both
12 parties, summations are argument. They are not evidence. Your
13 recollection of the evidence and the evidence that will get
14 sent back with you, that is the evidence. The arguments of the
15 lawyers are not. Whether it appeals to your common sense,
16 that's one thing. But the evidence is the evidence, and that's
17 for you to decide the facts of the case. Go ahead,
18 Mr. Donaldson.

19 MR. DONALDSON: Thank you. As I said, it says that he
20 is suppose to take an equity interest in Darden Enterprises at
21 the end of the maturity period which is at the end of November
22 of 2023. As I said, he got arrested in March of 2023. He got
23 sued in August 2023, not him, Darden Enterprises got sued in
24 August of 2023. That's the timeline. Mr. Howard exercised
25 none -- or he didn't testify that he did -- exercise any of

OA3BDAR3

Summation - Mr. Donaldson

1 those rights before my client was arrested in March of 2023,
2 not one. He invested in DSG with the hope that when he retires
3 three years later, he would be able to convert that investment
4 to Darden Enterprises assets. That's what was supposed to
5 happen. It was a convertible promissory note. It converted
6 after November 2023, not before, not 2021, not 2022, November
7 2023.

8 MR. RICCO: Mr. Donaldson, your screen's out.

9 MR. DONALDSON: Your screen is out too?

10 JUROR: Yes.

11 MR. DONALDSON: My fault. I don't need that. Let's
12 go. The promissory note, the convertible promissory note.
13 Judge, you have yours up?

14 THE COURT: It's not on my screen. Okay. It's on my
15 screen. Is it on your screens?

16 JUROR: Yes.

17 MR. RICCO: It's back.

18 MR. DONALDSON: My apologies, ladies and gentlemen.
19 The convertible promissory note. What is particularly
20 interesting is that Mr. Schmidt testified about it. He
21 testified about it, about it's unusual nature I guess is what
22 he said or something to that effect. But there was no expert
23 here called by the prosecution who has the burden to say
24 anything and I mean nothing about this convertible promissory
25 note that Dwight Howard signed. No evidence that Mr. Schmidt,

OA3BDAR3

Summation - Mr. Donaldson

1 who he said called the lawyer, challenged this promissory note
2 at all, and he apparently saw it in 2021. Not at any time in
3 2021, not any time in 2022. He told you all that he was
4 responsible for Mr. Howard's finances. He had the promissory
5 note in his hand. He read the promissory note. He even asked
6 Dwight Howard and Briscoe to let a lawyer look at the
7 promissory note. What did both of them say or what did neither
8 one of them do? Not according to Howard and according to
9 Mr. Schmidt. They did not take that opportunity. Why?
10 Because they were okay with it. They signed it. Well, Howard
11 signed it. He agreed to it. There was no point of going to a
12 lawyer because that's what he agreed to.

13 There's no evidence, and I mean zero, that Mr. Howard
14 exercised any rights related to this promissory note except in
15 August 2023, and it didn't convert until November of 2023.
16 According to Mr. Schmidt, it was structured as a debt, equity.
17 He wanted equity. He paid for equity. He didn't pay to say I
18 want my money back. It doesn't say that in the contract. So
19 when they ask him, Did you get your money back? That's
20 probably not the right question, because nothing in the
21 contract says, You get your money back.

22 Now if somebody wants to say, that's a messed up
23 contract, Mr. Donaldson. That's not cool, Mr. Donaldson,
24 whatever you want to say. The fact of the matter is, is that
25 Mr. Howard signed a contract. The provisions are in the

OA3BDAR3

Summation - Mr. Donaldson

1 contract. There's nothing about the Dream in the contract. He
2 provided \$7 million to the Darden Sports Group pursuant to the
3 contract and nothing else. There was absolutely no scheme by
4 Mr. Darden to obtain money from BMO using any materially false
5 representations. There's nothing in the record to say that.
6 So when you go back and deliberate and you ask yourself that
7 question, there's nothing in the record that says that
8 Mr. Darden did anything, said anything, any material
9 misrepresentations to get BMO to send \$7 million.

10 There's no aiding and abetting. Just because he was
11 present, just because he talk to him on text messages, that
12 doesn't make it aiding and abetting. Acquiescence is not
13 enough. They need Briscoe. They need the person who they
14 relied upon, the liar guy. They need him. The problem is,
15 he's a liar. Money laundering. But before we get to that,
16 somebody should be asking, Why do they want their money back or
17 why did he want his money back? Why did Howard want his money
18 back?

19 Mr. Ricco on cross-examination of Mr. Schmidt probably
20 answered that question. And they didn't talk about that in
21 their summation. I believe as Government Exhibit 359. And
22 what Government Exhibit 359 says I believe is that before the
23 team got sold, before the team got sold but after the
24 \$7 million went out to DSG, to Darden Sports Group, somebody,
25 an employee working at BMO contacted Charles Briscoe and told

OA3BDAR3

Summation - Mr. Donaldson

1 him, listen, Howard has a very large IRS bill. We don't want
2 to liquidate his assets. Call Cal and try to get that money
3 back. That was before the team got sold. So before the team
4 got sold, Mr. Howard was trying to get his money back, before.
5 This wasn't about no, the Dream got sold and I gave \$7 million
6 for the Dream. No. No. That's what he's using as an excuse.
7 But we know now based upon that wonderful question from
8 Mr. Ricco, small little detail, that before the Dream was sold,
9 I believe it was February 18, 2021, I believe that's the right
10 date, that's when BMO reached out and said, listen, Howard has
11 a large IRS bill. We don't want to liquidate his assets.
12 Contact Cal. Get that money back. And that my friends is why
13 you're really sitting here.

14 Money laundering. Let's talk about it for a quick
15 second. Judge, I'm almost finish.

16 THE COURT: Okay.

17 MR. DONALDSON: This legacy account they talked about
18 earlier. They put something up on a screen, and they put up on
19 the screen they had names, Baldwin, Legacy account. But what
20 they didn't put up there was the date. That's what they didn't
21 put up there. But feel free to look at the evidence, the
22 exhibits. Look at the Legacy account exhibits. It will tell
23 you, they're claiming now, oh, the Legacy account was made for
24 Mr. Darden to use it as fraud. He put the money in it. And
25 everybody was like, yeah, that's probably right because it

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Summation - Mr. Donaldson

1 assumes he got the money. It went to the Legacy account, and
2 we know it's money laundering because he was hiding his name.
3 It was by somebody else, Trevor Baldwin. Okay. Sounds good.
4 Problem. The account was open in 2017 by Trevor Baldwin long
5 before this stuff happened. So this part about the account
6 being opened by Trevor Baldwin or being opened by someone in a
7 different name in order to facilitate the money laundering.
8 Well, not when you look at the details, because the details say
9 this account was opened back in 2017 by Trevor Baldwin. Look
10 at the evidence. Feel free. Not in 2019, not in 2020, not
11 when they claim the money started going into the accounts,
12 three or four years earlier. Nothing to do with this, but
13 that's not what they're going to tell you because they got to
14 figure out a way to make this make sense.

15 Why a smart person like Mr. Darden really smart guy
16 according to them able to do all this doggone fraud is going to
17 be so dumb that in an effort to conceal where the \$7 million
18 and the \$1 million came from, he transferred it to bank
19 accounts, bought items using his own name. That's how you do
20 it, buddy. That's how you conceal where the money came from.
21 I put it into an account that says Calvin Darden. I use the
22 email that says Darden Enterprises. I use my actual driver
23 license in the account. I use my actual name and date of birth
24 in the accounts. I put my social security number in the
25 accounts. I really want you to look at the evidence of all

OA3BDAR3

Summation - Mr. Donaldson

1 those banks and look at the information provided to those
2 banks. And after you do that ask yourself, wait a minute, how
3 is this trying to hide something if he's putting this --
4 literally there are pictures of him in the bank accounts. Like
5 driver license, picture Calvin Darden with his face. I'm
6 trying to figure out how that's trying to hide. How that's
7 trying to conceal? How's that even possible? Literally each
8 account.

9 As Mr. Ricco asked the fantastic agent who testified,
10 you told us what happened? Yes. It went from that account to
11 that account. Do you know why it went from that account to
12 that account. I don't know that. Neither do they. Just
13 because they say it doesn't mean it's true. And just because
14 his name is on all the accounts, first and last name, father's
15 first and last name, verified addresses, verified date of
16 births, verified social security numbers, that somehow doesn't
17 appear to be a person trying to hide what he's doing. That
18 appears to be a person saying, I'm doing this out loud,
19 transparent. Look at me. Hear me roar. Just like he told
20 Brock when he first met him, I am a felon. I'm not doing
21 anything wrong. Just like he told the banks, here's my driver
22 license. Here's my name. Here's my social security number.
23 I'm not doing anything wrong. Run it. That's not called
24 concealment, unless you're an idiot. He's presumed innocent,
25 but he's not presumed to be stupid. Why go from bank to bank?

OA3BDAR3

Summation - Mr. Donaldson

1 Again, if there's a law that says you can't do that, fine.

2 Fine. But I don't think you're going to hear that from the
3 Court. I don't think the Court is going to say, well, if you
4 go from bank to bank, that's a crime and you're convicted. I
5 don't think you're going to hear that. I may be wrong, but I
6 don't think you're going to hear that.

7 Other part of money laundering. There's no proceeds
8 from unlawful activity. How do we know that? Because the
9 proceeds came from the \$7 million. Where did the \$7 million
10 come from, the promissory note. The promissory note was
11 lawful. Again, we can do this all day. We can go back to the
12 team. I bought the team. I knew I wasn't suppose to buy the
13 team. I committed fraud against the WNBA that's why I'm not
14 telling anybody. Or, okay, you got me. I didn't do that.
15 You're right. I use \$7 million for the promissory note. I
16 just really want it back. That means no fraudulent activity.
17 That means no money laundering. That means check not guilty,
18 let's move onto the next one.

19 Our client has pleaded not guilty. As such, he denies
20 all the charges in this indictment. As he's sitting there
21 right now, he's pleaded not guilt. And as he's sitting there
22 right now, he's denied all the charges in this indictment.
23 Mr. Parsons, an NBA player attempted to provide a million
24 dollars to a college athlete before he got drafted to go to an
25 agent. Mr. Howard, an active NBA player who either was trying

OA3BDAR3

Summation - Mr. Donaldson

1 to commit fraud against the WNBA or he's telling you all a feel
2 about using that money to buy an WNBA team. Mr. Darden
3 legitimately attempted to help his father purchase the Dream,
4 legitimately told Mr. Brock he's a felon, legitimately he and
5 his father met with Dream executives, legitimately he and his
6 father met with WNBA executives. Legitimately he and his
7 father met with Loffler's husband. And legitimately as an
8 offer of good faith he and his father attempted to give them
9 money to put in an escrow account to hold it to show that they
10 were bona fide good faith purchasers of the Dream. That my
11 friends is why Calvin Darden, Jr., is not guilty. Thank you.

12 THE COURT: Thank you very much. If I see counsel
13 quickly at sidebar. Thank you.

14 (Continued on next page)

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Summation - Mr. Donaldson

(At the sidebar)

THE COURT: I know I stated the plan was that we would break in between and try and do things before lunch, but it's already it's 1:00. I don't know how long is the government's rebuttal?

MR. MEAD: Close to two hours, I think we probably got half an hour, so I think it does make sense to break for lunch.

MR. RICCO: I agree.

THE COURT: We're going to break for lunch, no talking about the case because they don't have the case yet, and then we're going to come back at 2:00, 2:15.

MR. MEAD: Whatever works.

THE COURT: Why don't we come back at 2:15. All right.

MR. DONALDSON: Thank you.

THE COURT: And we'll do the rebuttal summation and then I'll go right into the charge. Okay. All right. Thank you very much.

MR. RICCO: Judge, just so you know we need the break.

THE COURT: All right.

(Continued on next page)

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Summation - Mr. Donaldson

1 (In open court)

2 THE COURT: Okay. So, ladies and gentlemen, a slight
3 change of plans. I know I had mentioned that we were going to
4 try to get all the jury addresses in before you have lunch, but
5 it's 1:00 now. We still have to do the government's rebuttal
6 summation. So we're going to take our launch break. We'll
7 come get you at about 2:15. Go back. Enjoy your lunch. You
8 don't have the case yet, can't discuss it. Go back and enjoy
9 your lunch, and we will come and get you. We'll hear the
10 government's rebuttal summation and then the jury charge.
11 Okay. Thank you very much have a good lunch.

12 (Continued on next page)

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Summation - Mr. Donaldson

1 (Jury not present)

2 THE COURT: Thank you. You may be seated. Let me ask
3 is there anything we need to deal with before we take our lunch
4 break?

5 MR. MEAD: Not from the government.

6 MR. DONALDSON: No, your Honor. Thank you.

7 MR. RICCO: No.

8 THE COURT: There was that one issue with regard to
9 adding an additional sentence to the aiding and abetting. I
10 take it since we didn't hear from the government or was there
11 an objection?

12 MR. KINDER: The language that the Court proposed is
13 fine with the government, your Honor. While we're on the
14 subject we have one observation about the verdict sheet. For
15 Counts One and Two which are broken out by victim, we have in
16 italics, please address both A and B. Your verdict must be
17 unanimous. The statement, Your verdict must be unanimous is
18 then not present for Three, Four and Five.

19 THE COURT: We can include it.

20 MR. KINDER: Two suggestions. One is take out your
21 verdict must be unanimous and state orally to the jury that
22 each entry that you make, your verdict must be unanimous, or
23 add it for Three, Four and Five.

24 THE COURT: I think I'll add it for each of them. I
25 agree with them. The charge already has that it has to be

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Summation - Mr. Donaldson

1 unanimous, but we can add that to the verdict sheet to the
2 other counts. Okay. All right. Thanks, everyone. See you
3 after lunch.

4 (Recess)

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Rebuttal - Mr. Mead

AFTERNOON SESSION

2:25 p.m.

(Jury not present)

THE COURT: You may be seated. Okay. Is there anything we need to address before we get the jury and do the rebuttal summation?

MR. MEAD: Not from the government, your Honor.

THE COURT: Defense?

MR. DONALDSON: No, your Honor. Thank you.

THE COURT: All right. Let's get the jury.

(Jury present)

THE COURT: You may be seated. Ladies and gentlemen, I hope that you had a relaxing lunch. We're now going to continue with the summations and the government's rebuttal summation. Mr. Mead, you may proceed.

MR. MEAD: Ladies and gentlemen, the defense counsel in this case are very good lawyers, and it's their job to advocate for their client.

THE COURT: Mr. Mead, I apologize. Is the microphone on?

MR. MEAD: It appears not to be.

THE COURT: It slides. There you go. I think it's on now. Great. Thank you.

MR. MEAD: Can you hear me? What the defense counsel in this case are not are magicians, and they can't make the

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Rebuttal - Mr. Mead

1 evidence in this case disappear. They can't make the lies that
2 the defendant and Briscoe told disappear. And they can't make
3 the millions of dollars that went from the victims into the
4 defendant's pockets disappear, the millions he took from his
5 victims, put into his shell companies, bank accounts and
6 laundered through six more bank accounts. The millions he
7 spent buying a mansion in Atlanta, buying the Lamborghini, a
8 Rolls-Royce, a Porsche and a Mercedes, buying art, jewelry,
9 watches and other luxury goods for himself. They can't make
10 any of that evidence disappear. So what do they try and do?
11 They distract you, but don't be distracted. Focus on the
12 evidence.

13 Now, defense counsel made a lot of different arguments
14 to you, and I don't have time to address every single one of
15 them. Mr. Thompson has already laid out the evidence piece by
16 piece to show how it all fits together. And I trust, ladies
17 and gentlemen, that you understand what happened in this case.
18 You know the evidence. You've seen this trial. But I do want
19 to respond to a couple of points that the defense made. Before
20 I do that though, I want to make one thing crystal clear here.
21 The defendant in this case does not have to do anything at all
22 in this trial. He doesn't have to make any arguments. He
23 doesn't have to submit any evidence. He has no burden. The
24 burden to prove beyond a reasonable doubt, that's our burden,
25 and we embrace that burden, and we've done it here. But when

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Rebuttal - Mr. Mead

1 the defense counsel does make arguments, you are permitted to
2 scrutinize those arguments. And here's one thing that all the
3 lawyers in this case agree on. You guys when you're back in
4 that jury room, you should use your common sense, and you
5 should use your common sense to think about whether the
6 arguments the lawyers are making to you in these closing
7 arguments make sense or not.

8 So let's talk about a couple of the arguments from the
9 defense and whether they're consistent with your common sense
10 and with the evidence in this case. Now, the defense got up
11 and said that there were "no secrets" in this case. There were
12 secrets in this case. There were lies. The people and the
13 companies on the vision plan, they weren't really involved.
14 The defendant kept that fact secret from everyone. He lied
15 about it. The defendant didn't intend for the money that he
16 got to go to James Wiseman or to buy the Atlanta Dream. He
17 kept that secret too. He lied about it.

18 Now, it is true that the defendant didn't lie about
19 everything all the time. Let's use our common sense here.
20 That's not how frauds work. That's when you get caught right
21 away. If you lie about everything the second someone checks on
22 something, you're done. You're caught. If you're good at
23 committing a fraud though, you only lie about the stuff you
24 think you can get away with, and that's what the defendant did.
25 You don't lie about whether or not you were convicted of a

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Rebuttal - Mr. Mead

1 felony in the past. The defendant testified in open court in
2 2015 about the crimes he committed. That information was out
3 there. If he tried to hide that, the second anyone looked him
4 up, they would have found out about it and it would have been
5 over for him. And the defendant didn't impersonate Calvin
6 Darden, Sr., to John Brock. John Brock knew Calvin Darden, Sr.
7 It would be hard to impersonate someone that the person knew.
8 That's how you get caught. But there was impersonation in this
9 case. The impersonation wasn't to John Brock the person who
10 knew Calvin Darden, Sr. The impersonation that the defendant
11 did of his own father, he did that to Briscoe and Jeff Schmidt,
12 the banker. They didn't know Calvin Darden, Sr. personally.
13 And the impersonation on them, it worked. That's why you
14 didn't hear Jeff Schmidt testify that the defendant was
15 impersonating his dad. The impersonation worked.

16 Now, let's look at the phone numbers again. The
17 defendant controlled two phone numbers, the number ending in
18 5686 and the number ending in 1779. You saw all the evidence
19 that he controlled those numbers. He used them to talk to
20 people, and he listed them as his phone numbers over and over
21 again. I just want to show you just one example because the
22 defense said there was no evidence of this.

23 Mr. Ross, can you please pull up Government Exhibit
24 404 at page four side-by-side with Government Exhibit 1142, and
25 you can zoom in on the blue message, please, on the left.

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Rebuttal - Mr. Mead

1 The blue messages, these are the defendant sending
2 them using the 5686 phone number. He says, Hi, Charles, I'm no
3 longer on Coke's board. I'm on Target, Cardinal Health and
4 Aramark. Those are the boards that Calvin Darden, Sr., serves
5 on, and the defendant is sending this message from the 5686
6 phone number. Okay. How do you know that that 5686 phone
7 number actually belongs to the defendant, that the defendant
8 was actually using it? Well, there's a ton of evidence in this
9 case. This chart on the left. These are all of the bank
10 documents and invoices and phone records where the defendant
11 says, this 5686 phone number, this is my phone number. And you
12 also heard from Special Agent Cromer. He arrested the
13 defendant. And right before he arrested him, right at seven in
14 the morning, he called the defendant on this same phone number
15 he's using to impersonate his dad so he could go in and arrest
16 him. And the defendant picked up on that phone number. The
17 evidence that the defendant was impersonating his dad in this
18 case, it's there on the screen. It's evidence. It's black and
19 white. You can take that down, Mr. Ross.

20 Now, the defendant impersonated his dad, but the
21 defense said that his dad was also involved in some of these
22 deals. Sure he was a little bit, as a figurehead. Calvin
23 Darden, Sr., showed up at one meeting, and he showed up on the
24 zoom call. Why? Because the defendant needed his father's
25 credibility to make this con work. Who got the money? The

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Rebuttal - Mr. Mead

1 defendant. Who did the lying? The defendant. Who
2 impersonated Calvin Darden, Sr. as we just saw? The defendant.
3 Who did most of the talking in the meeting, in the emails
4 you've seen? The defendant. The defendant and Briscoe were
5 the ones running this con. Calvin Darden, Sr., the defendant's
6 dad, he was just one of the many people that the defendant used
7 to make this fraud work.

8 Now, the defense talks about Charles Briscoe a whole
9 bunch, one of the defendant's co-conspirators. And the defense
10 wants you to think this whole scheme, this was all Charles
11 Briscoe, not my guy. But, ladies and gentlemen, you know that
12 the defendant knew exactly what he was doing in this fraud. He
13 wasn't some dupe of Charles Briscoe. How do you know that?
14 Mr. Ross, Government Exhibit 1121 in evidence, please. This is
15 the money from Dwight Howard. And what happened to the money?
16 There's a little bit over \$6 million on this chart. And
17 Charles Briscoe got a little over \$1 million of it. The
18 defendant got the rest of it. More than \$5 million. It was
19 the defendant's house that was bought with fraud proceeds. The
20 defendant's cars, the defendant's art, the defendant's luxury
21 goods, and payments to the defendant's mom. The guy who gets
22 almost all of the money in the fraud, that's not the dupe,
23 that's the mastermind.

24 Now \$1 million was also stolen from Chandler Parsons,
25 and more than half of that went to the defendant as his cut of

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Rebuttal - Mr. Mead

1 the fraud. The defendant wants you to believe that he's the
2 unluckiest guy in the world. Charles Briscoe committed a fraud
3 and then gave the defendant almost all of the money from it.
4 Does that make any sense to you, ladies and gentlemen? No, it
5 doesn't. It's the defendant's fraud. He did it with Briscoe.

6 Now, look at who, besides the money, look at who
7 played a bigger role in these frauds. On the Dream fraud. Who
8 is the point of contact with the Dream and the WNBA and the
9 bank? The defendant. Who wrote the vision plan with its false
10 promises? The defendant. Who wrote and signed the promissory
11 note with Howard? Again, the defendant. On the Wiseman fraud.
12 Who originally falsely claimed to have the relationship with
13 Wiseman? The defendant. Who sent text after text with ideas
14 about how to pressure Chandler Parsons into sending the money?
15 The defendant. Who impersonated his own father to get this
16 fraud done? The defendant.

17 And finally on Charles Briscoe. I expect Judge
18 Broderick to tell you that even if the defendant had a lesser
19 role than Charles Briscoe in this fraud, it doesn't matter. As
20 long as the defendant knowingly participated in the fraud. And
21 of course the evidence shows that he at least knowingly
22 participated in the fraud. These were his fraud schemes. The
23 defendant says that he was really trying to buy the Atlanta
24 Dream. With what money? You've looked at the bank accounts
25 belonging to the defendant. He doesn't have any money other

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Rebuttal - Mr. Mead

1 than the money that he stole from Chandler Parsons and Dwight
2 Howard. If he was ever going to buy the Dream, it was going to
3 be with Dwight Howard's money. And if he was ever planning on
4 using that money to buy the Dream, he sure didn't act like it
5 when Dwight Howard's money showed up in his bank account. The
6 defendant got \$7 million from Dwight Howard in November and
7 December. And you learned that someone else was buying the
8 Dream in late January or early February. What did he do in
9 that period in between when he got the money and after he got
10 the money before he learn there was another buyer? Can you put
11 up the demonstrative, Mr. Ross. Thank you.

12 This is what the defendant did with the money before
13 the deal fell through. He spent more than \$1.4 million of
14 Dwight Howard's money before he even learned that there was
15 another buyer. He bought a Rolls-Royce for himself, a Porsche
16 for himself. He gave more than \$400,00 to his mom, \$250,000 to
17 Charles Briscoe who helped him rip off Dwight Howard; \$60,000
18 in loan repayments, \$130,000 to other people. And that's what
19 happened before he learned that the deal had gone through.
20 What did he do after he learned that someone else was buying
21 the Atlanta Dream? He spent the rest of the money.

22 Now, ladies and gentlemen, use your common sense here.
23 What would someone trying to do a real deal acting in good
24 faith had done? They would have kept Howard's money safe while
25 they tried to finish the deal with the Dream. When that deal

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Rebuttal - Mr. Mead

1 fell through and he couldn't use that money to buy the team
2 anymore, they would have given Dwight Howard his money back.
3 But the defendant, he stole it, and he spent it. Now, the
4 defense says that Dwight Howard is lying. And, ladies and
5 gentlemen, there's no dispute that Dwight Howard sent this
6 \$7 million. We're going to talk about what he got in return,
7 but he got nothing in return.

8 There was a lot of talk about Dwight Howard. And
9 maybe it is true that the WNBA wouldn't have wanted Howard to
10 be a behind the scenes owner of the Atlanta Dream. But even if
11 that's true, that doesn't mean the defendant is allowed to
12 steal \$7 million from him. Dwight Howard told you what the
13 money was for. He told you it was for the team, so did Jeff
14 Schmidt, the banker. There was a lot of talk about, oh, Dwight
15 Howard had a motive to lie. The banker has no motive to lie at
16 all. He said the money was for the team. And that's what
17 Dwight Howard was telling Briscoe, and what Briscoe was telling
18 Howard even after he signed the promissory note and sent the
19 money.

20 201-J, please, Mr. Ross on page one. You can zoom in
21 on the messages. The defense talked about -- so these are text
22 messages, ladies and gentlemen, between Howard and Briscoe.
23 And Howard is in green and Briscoe is in blue. And these are
24 messages from January 6, 2021, after Dwight Howard has sent
25 \$7 million to the defendant, and before he's found out that

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Rebuttal - Mr. Mead

1 someone else has actually bought the team. The defense talked
2 about these messages. Let me read them to you.

3 Dwight Howard: You see LeBron is talking about owning
4 the team. Then there's a tweet from LeBron sent. And then
5 Charles Briscoe says: It's too late for that. Go to page two.
6 Dwight Howard ask: We still good on that? And Briscoe says,
7 Yes, sir. If we can go back to page one and zoom in on the
8 messages again. The defense said, don't worry about these
9 messages when they were just talking to you. They said these
10 messages are cryptic. They say, who knows what they're really
11 talking about here. Well, these messages aren't cryptic. You
12 see LeBron talking about owning the Dream. It is crystal clear
13 what they're talking about. Dwight Howard thinks that he has
14 bought the team, and he's checking in with Charles Briscoe to
15 make sure that's right. And Charles Briscoe says, Yeah, of
16 course, you got the team. LeBron can't buy it. You own it.
17 Okay.

18 The defense talked about the vision plan a lot. And
19 there's no dispute that the vision plan was full of lies.
20 There's no dispute that all those people on there didn't
21 actually agree to join the board. There's no dispute that all
22 those companies up there didn't really agree to be sponsors.
23 But what about the idea the defense said that the defendant was
24 pushed into including these people and companies into the
25 vision plan. There was kind of a joint effort between the

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Rebuttal - Mr. Mead

1 defendant and Mr. Brock and Mr. Sienko, and, you know, he
2 wasn't really responsible for whatever was on there. It's
3 absurd, ladies and gentlemen. The defendant is the one who
4 wrote the vision plan. Chris Sienko, John Brock, Dwight
5 Howard, yeah, they had some ideas for the team. They had some
6 ideas for how the defendant could run the team, but they didn't
7 tell the defendant to lie. They didn't make him tell these
8 lies. Dwight Howard didn't even know who some of those people
9 were. Jennifer Baltimore, the defendant's friend who testified
10 and said she never agreed to be involved. Of course putting
11 her in there was the defendant's idea. It was the defendant's
12 idea to take advantage of people he knew like Jennifer
13 Baltimore and his father to get money for himself. No one ever
14 told the defendant to lie in the vision plan. He did that all
15 by himself.

16 The defendant says the lies in the vision plan didn't
17 matter. Well, you heard from Issa Rae, from Jennifer
18 Baltimore, from Rosalind Brewer, from representative of Aflac,
19 Tyler Perry and Naomi Osaka, the defendant lied about their
20 involvement. And let's start with the obvious. The defendant
21 knew what he was doing there. He lied about the involvement of
22 these people and companies because he knew it would make it
23 more likely that Dwight Howard would give him \$7 million. The
24 defense made a big deal about why Dwight Howard wanted to buy
25 the team. And ladies and gentlemen, you don't have to decide

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Rebuttal - Mr. Mead

1 whether Dwight Howard wanted the team because he wanted to help
2 women play basketball or because he thought he would make
3 money. Usually people do things for multiple reasons, and I
4 think that's what happened here. But of course Dwight Howard
5 either way would rather own a team that made money than lost
6 money. And of course owning a team with a bunch of corporate
7 sponsors and some of the most famous celebrities in the world
8 would be better than owning it without them.

9 Think about just the sponsorships for a minute. The
10 defendant is saying we have all these corporate sponsors. He's
11 lying about how much money the team is going to make. He's
12 lying about the bottom line. A team without those sponsorships
13 and that income is worth less than a team with them, especially
14 when WNBA teams were generally losing money. But we can look
15 at some text messages from the defendant because he knows how
16 important his vision plan is. Mr. Ross, can you please pull up
17 Government Exhibit 401-961, page five, side-by-side with
18 Government Exhibit 2404, 401-961 page five, please Mr. Ross.
19 If you could zoom in on the top two messages on the left,
20 please, Mr. Ross.

21 Now these are messages between Calvin Darden, Jr., and
22 Charles Briscoe. And Calvin Darden, Jr., says, You think he'll
23 do it? Briscoe responds, I think there is a great chance. He
24 is very intrigued by the deck. At some point next week it
25 maybe worth doing a call and have you give him more insight on

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Rebuttal - Mr. Mead

1 the deck. The defense talked about these text messages too.
2 They said these are cryptic too, who knows what they're talking
3 about. A deck, this can be anything. It can't be anything,
4 ladies and gentlemen. Because you have an email on the right
5 where Calvin Darden is sending Charles Briscoe the vision plan,
6 the document that's full of lies. And he sends Briscoe the
7 vision plan the day before these text messages. So what do you
8 know happened, ladies and gentlemen? The defendant sent
9 Briscoe the vision plan. Briscoe talked about it with Dwight
10 Howard, and the very next day Briscoe tells the defendant, Man,
11 Dwight Howard was pretty interested in this vision plan. I
12 think he's going to do it.

13 There was also some talk about the letter of intent
14 from February of 2021, the fake letter of intent. And,
15 Mr. Ross, if you could do 2413 at page two side-by-side with
16 401-1177 at five. On the left you got the letter of intent.
17 This document, it's fake. It's totally made up. This says
18 that the defendant's group is going to be part owners with
19 Suzanne Abair's group. They're going to own the team together.
20 That never happened. You heard from Ms. Abair. She explain to
21 you that this was never a real deal. This was never a
22 contract. You heard John Brock say the same thing. The
23 document is fake.

24 The defense response was, well, this is a document
25 that the defendant just emailed to himself for his dad. How do

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Rebuttal - Mr. Mead

1 you know that this slide went anywhere else? Well, you know
2 from the text messages, ladies and gentlemen. One second, your
3 Honor

4 THE COURT: Yes.

5 MR. MEAD: The message on the right, this is from
6 Calvin Darden, Jr. to Briscoe. And he says, the defendant
7 says, I told Brock we're going to do the deal with them. We're
8 not going to be named in the deal though. They want my
9 father's and the mayor's help in getting their new project
10 done. You can also let Dwight know. This is a text message
11 about the fake deal. And the defendant is telling Briscoe,
12 tell Dwight Howard about this fake deal. Tell him about this
13 fake deal. Why is he doing that? Why does this matter? He
14 wants Dwight Howard off his back. He wants to trick Dwight
15 Howard into thinking that he actually owns the team even though
16 he doesn't.

17 Now, let's talk about the promissory note because the
18 defense talked about that a lot too. The defense says that the
19 defendant was allowed to take Dwight Howard's \$7 million and
20 spend it on whatever he wanted because of the promissory note
21 that he and Howard, he and Briscoe had Dwight Howard sign.
22 That promissory note is just another part of the fraud. Now,
23 according to the defense, this promissory note, this was a good
24 deal for Dwight Howard. What did the defense say that Dwight
25 Howard got when they stood up right before the lunch break?

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Rebuttal - Mr. Mead

1 They said he got a stake in Darden Sports Group, a percentage
2 of the company, and that was worth \$7 million. But let's look
3 at the Darden Sports Group. We've seen their bank accounts in
4 this case.

5 Mr. Ross, Government Exhibit 1112, please. Now, this
6 is a summary on the screen of the Darden Enterprises which is
7 the Darden Sports Group bank account. And you can see on the
8 left of the screen exactly how much money the Darden Sports
9 Group had before it got millions of dollars from Dwight Howard.
10 Zero. No money in its bank account. That company was
11 worthless. Now the defense says there was a house. They got
12 up and said that the house belonged to the Darden Sports Group.
13 That's not true. Can we go to Government Exhibit 713-A at 3
14 please Mr. Ross. Up on the screen, this is the contract to buy
15 that huge mansion in Atlanta that we've looked at a couple of
16 times now. It doesn't say Darden Sports Group or Darden
17 Enterprises anywhere on here.

18 MR. DONALDSON: Objection.

19 THE COURT: Well, ladies and gentlemen, you're
20 entitled to look at the exhibit and see what it says. The
21 government is making argument, but it's your recollection of
22 the evidence and the testimony, including exhibits that will
23 control. Okay. Go ahead.

24 MR. MEAD: Ladies and gentlemen, you should look at
25 it, but if you look in the top right, it says buyer signature,

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Rebuttal - Mr. Mead

1 Calvin Darden. It doesn't say anything about Darden
2 Enterprises, anything about the Darden Sports Group. And, yes,
3 the name on there is Calvin Darden, Sr. But sometimes the
4 details matter. There's a phone number. If you could zoom in
5 on that phone number please, Mr. Ross. That phone number that
6 is listed for Calvin Darden, Sr., that's that same 5686 phone
7 number that belongs to the defendant, that the defendant used
8 to impersonate his father. And you know something else
9 important about the house, the defendant lives there. It was
10 full of his stuff. It wasn't an asset of the company. It was
11 his own personal house, and Darden Sports Group had nothing.
12 It was worthless, and so was Dwight Howard's stake in it.

13 So just think about this defense argument for a
14 minute. The defendant gets \$7 million from Dwight Howard.
15 Dwight Howard gets nothing in return, a stake in a worthless
16 company. And the defense says, that's a legitimate business
17 transaction. Does that make sense to you, or does that sound
18 to you, ladies and gentlemen, like a fraud? And on the
19 promissory note, I expect Judge Broderick will give you an
20 instruction about the promissory note, and his instruction
21 controls, not what I say, what he says. But I expect that he
22 will tell you, ladies and gentlemen, that the defendant cannot
23 use limitations in a contract to avoid criminal liability for
24 lies made with an intent to defraud.

25 Now, ladies and gentlemen, have you ever signed a

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Rebuttal - Mr. Mead

1 document without understanding every single part of it? Have
2 you ever signed it because someone you trusted had read it and
3 said it was okay for you to sign? Maybe that person was a
4 spouse or a lawyer or an accountant or real estate agent, and
5 maybe that document was a tax return or a lease or a mortgage.
6 That kind of thing happens all the time, and that's what
7 happened here. Dwight Howard is a former professional
8 basketball player and a very good one. He didn't go to
9 college. He's not a lawyer. He's a champion on the basketball
10 court, but not in reviewing contracts. For that he relied on
11 someone he trusted, that person was his agent Charles Briscoe.
12 But what Dwight Howard didn't know was that Briscoe was
13 conspiring with the defendant to steal his money. So Briscoe
14 told Howard to sign the contract and he did because he trusted
15 Briscoe and he trusted the people that Briscoe brought to work
16 with him, people like the defendant. And the defendant knew
17 that Dwight Howard trusted him, and he took advantage of that.
18 He told Howard in a text message that he was grateful for
19 Howard's trust in him. The defendant and Briscoe took
20 advantage of that trust. They tricked Dwight Howard into
21 signing the document. It does not reflect what the defendant,
22 Briscoe, Howard and the other people involved in the deal were
23 actually talking about. Howard told you that. And Schmidt the
24 banker told you that. This note was not a real agreement. It
25 was part of the fraud. And tricking victims with documents is

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Rebuttal - Mr. Mead

1 exactly what the defendant and Briscoe did over and over again
2 in this case. When they can get a victim to sign the document,
3 that's what they did, and that's what they did to Howard. But
4 when they couldn't get someone to sign a document, they just
5 made it up. That's what they did with the Wiseman contract.
6 They forged Wiseman's signature and his mom's signature.
7 That's what they did with the February 2021 letter of intent
8 that we talked about. It's fake. And you know the promissory
9 note was a bogus document, not only because it reflected a
10 different deal than everyone was actually talking about, but
11 because it's a document that actually doesn't make a ton of
12 sense.

13 Mr. Ross, 2413 at page seven, please. You can zoom in
14 on the text. You can start with Dear Dwight to make it a
15 little more readable. So let's look at the investor line. It
16 talks about Dwight Howard and other investors. There were no
17 other investors. Let's look at the use of proceeds, and let's
18 do some math because the math here, it doesn't add up. The use
19 of proceeds it adds up to \$6 million a year; \$2.5 million; \$2.5
20 million a year, \$1 million a year, \$6 million. Each per year
21 over three years. That's \$18 million. But the actual amount
22 in here is only \$7 million. The math doesn't work. It doesn't
23 add up.

24 And you go to page nine of this document, please,
25 Mr. Ross. And you could zoom in on board representative

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Rebuttal - Mr. Mead

1 please, Mr. Ross. Now, look who the defendant put on the board
2 of the company as Howard's representative to help him out with
3 this deal. Charles Briscoe, his co-conspirator. You can take
4 this down, Mr. Ross. You heard Dwight Howard and Jeff Schmidt
5 testify what about the actual deal was. The money was for the
6 Atlanta Dream. But even if we take this document at face
7 value, even if that was actually the deal, that promissory
8 note, it was still a lie. This was a promise to pay Dwight
9 Howard \$7 million back. That was a lie. He didn't get the
10 money back. And you know the defendant never planned to give
11 him the money back, because he spent all the money and didn't
12 have any other money. You saw the bank accounts. It was a
13 promise to pay interest. That was a lie. Not a penny of
14 interest was paid to Dwight Howard. It was a promise to use
15 money on "operating expenses" the addition of a production
16 company. That was a lie. The defendant took the money and
17 spent millions of dollars of it on stuff for himself.

18 Now, the defendant not only stole all this money, but
19 he also laundered it. He moved that money into an account in
20 the name of Legacy AC. That was his company, but he
21 deliberately kept his name off that account. He wanted to hide
22 that he controlled the account with the stolen money, and
23 that's money laundering, but he went further. Government
24 Exhibit 1101, please, Mr. Ross. This is what I called the
25 money laundering chart. This is the money going from account

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Rebuttal - Mr. Mead

1 to account to account to keep hiding the money. This is money
2 laundering. The defense talked about money laundering in their
3 closing. They said, well, look, all the accounts are in his
4 name, so this would be a dumb way to hide the money. But the
5 first account, the one that gets the fraud money, not in his
6 name, that's the Legacy AC account. That account is from 2017,
7 and he set it up to hide his money after his last conviction.
8 Remember that the defendant --

9 MR. DONALDSON: Objection.

10 THE COURT: Ladies and gentlemen, again this is the
11 government's argument. It's up to you to decide whether it
12 makes sense to you.

13 MR. MEAD: Remember that the defendant was on
14 supervised release and he had to give his probation officer
15 information about his bank account if the probation officer
16 asked. The defendant wanted to stash his money in an account
17 that his probation officer wouldn't know about, an account that
18 wasn't in his name. And let's look at just for a minute,
19 ladies and gentlemen, how he actually moves the money from an
20 account not in his name into an account in his name.
21 Government Exhibit 602C-3 please Mr. Ross.

22 Now I'm not going to bore you with this too much,
23 ladies and gentlemen. This is a wire transfer from Legacy AC
24 into the Darden Enterprises account which has his name on it,
25 and it's for \$5.5 million. And when you send money like this,

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Rebuttal - Mr. Mead

you sometime explain to the bank why you're sending the money.

(Continued on next page)

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Rebuttal - Mead

1 MR. MEAD: And that's what he did here. Zoom in on
2 where it says details, purchase agreement licensing deal.
3 There was no purchase agreement licensing deal. This was a
4 lie. When the defendant transferred this money, he was trying
5 to make it look like the money came from a legitimate source, a
6 purchase agreement licensing deal, but it was a lie. He's
7 trying to make this money look like clean money. He's trying
8 to launder it.

9 Okay. I'm going to sit down soon, ladies and
10 gentlemen. I promise, but let's talk for just a minute about
11 beyond a reasonable doubt. I think you're going to hear a lot
12 about that from the judge. We embrace that burden. The
13 government must prove that someone is guilty beyond a
14 reasonable doubt in order for them to be convicted of a crime,
15 but it's not some magic or insurmountable standard. It is the
16 standard that is applied every day in every criminal case
17 across the country. It's been the standard as long as this
18 country has existed for more than 200 years. It does not
19 require you to leave your common sense at the door.

20 The government has met that standard here. There is
21 no reasonable doubt that the defendant defrauded Dwight Howard
22 and Chandler Parsons out of \$8 million and then laundered the
23 money that he stole. When you look past all the distractions,
24 misdirections, and the unsupported arguments from the defense
25 and when you focus on your common sense and the evidence, you

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1 can have no such doubt. The defendant, that man, stole from
2 two professional basketball players. He got caught. He got
3 charged. He went to trial. And he's guilty.

4 THE COURT: Okay. Thank you, Mr. Mead. So ladies and
5 gentlemen, we're going to take a brief break. Go back, relax.
6 You don't have the case yet, but when you come back you'll have
7 a copy of the jury instructions on your chairs and a copy of
8 the verdict sheet, and we'll go through and I'll read the jury
9 charge to you.

10 So go back. It will be about ten minutes or so, okay?
11 Thank you very much. Remember do not discuss the case.
12 Hopefully there are snacks back there. Have a snack. We'll
13 see you in a bit. Thank you.

14 (In open court; jury not present)

15 MR. RICCO: Your Honor, I want to bring to the Court's
16 attention the following that Mr. Donaldson objected to, and
17 that is that Calvin Darden, Jr.'s case, the judgment that was
18 put in, supervised release on that case was terminated on
19 August 28, 2020.

20 At the time Mr. Darden received the money, the first
21 and/or the second, November 13, 2020 and December 1, 2020, he
22 was not on supervised release, and it is improper for a
23 government prosecutor to make an argument that he put those
24 moneys in that account to hide it from his probation officer
25 because he was under supervised release, because he was not.

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1 That's a patently improper argument for a prosecutor to make.

2 THE COURT: Here again, there were arguments made by
3 both sides that could be made that weren't necessarily tethered
4 to the evidence. And I don't remember exactly what Mr. Mead
5 said, and I don't remember whether it was directly tied to it
6 or not. So again, it's up to the jury to decide whether the
7 argument makes sense and whether it's based upon the evidence
8 that's been presented.

9 MR. RICCO: Judge, I think that arguments -- my view,
10 Judge, arguments should be made in good faith, and prosecutors
11 are held to a higher standard with respect to court documents.

12 THE COURT: But so are -- I mean, if we go down this
13 road, Mr. Ricco -- and again, I'll hear from the government in
14 a moment, but if we go down this road where -- and I'm not sure
15 what the ask is here, but where you're asking me to parse
16 through arguments that were made that perhaps weren't
17 necessarily based on evidence -- so let me actually ask what is
18 the ask here?

19 MR. RICCO: The ask is for this jury to be instructed
20 at the time Mr. -- there's no evidence in this case that at
21 the time Mr. Darden received any of the payments that he was
22 under any judicial supervised release. And Judge, I'm not
23 trying to say it's a tit for tat. There were many other
24 statements that were made that I thought were outside of the
25 evidence. I didn't object to them because I agree there's a

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1 lot of latitude that both sides get, and that's appreciated.

2 But I don't think a prosecutor can argue that the
3 defendant was under supervised release and at the time he
4 received those moneys and put them in the account, that he was
5 doing them to avoid his responsibility with supervised release
6 when it was a judicial fact -- a judicial fact that the
7 defendant was not. And I'm asking the Court to take judicial
8 recognition of that and instruct the jury as softly as
9 possible -- I mean, the Court may say, look, both sides -- I
10 don't have a problem with that. I just have a problem when
11 that kind of argument is made. And I'm looking right at the
12 record, Judge. It is not supported in the judicial record of
13 that case.

14 THE COURT: Okay.

15 MR. RICCO: And Judge, I have no objection to the
16 Court crafting something -- both -- whatever, I don't have a
17 problem with that, Judge. I just have a difficulty with that
18 specific argument.

19 THE COURT: Okay. Let me hear from the government.

20 MR. MEAD: A couple responses, your Honor.

21 One is money from -- Mr. Ricco's right about the
22 timing, right, he is in fact. Supervised release ends, I
23 think, some time in 2020 before the Dwight Howard money gets
24 in. But he's on supervised release when the Chandler Parsons
25 money comes in, which goes right into the Legacy AC account as

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1 well.

2 It was also responsive to a defense argument that,
3 while the account was set up back in 2017 – and what I think I
4 said was why did he set up this account? Because he was on
5 supervised release when he set up the shell company account.
6 So I don't think I said anything improper at all. That being
7 said, in a super abundance of caution, I'm open to some sort of
8 very neutral statement from the Court about supervised release
9 ended on this date. I would want it to be clear that there's
10 no allegation of misconduct or anything like that, but I don't
11 have an objection to that plain fact.

12 MR. RICCO: And Judge, just to be clear, I'm not
13 suggesting that anybody did anything purposeful. I mean, there
14 are so many dates and circumstances in this case, and I'm
15 really asking for something that is extremely neutral without
16 casting any aspersions on the government or the prosecutors in
17 this case.

18 THE COURT: Well, I think what I need is the parties
19 need to come together and provide some language. I think there
20 is the argument, as Mr. Mead has said, that in 2017, when this
21 account is created in the name of --

22 MR. RICCO: Legacy.

23 MR. DONALDSON: Trevor Baldwin.

24 THE COURT: Trevor Baldwin that the defendant had a
25 reporting obligation, if asked, and that when the Chandler

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1 Parsons money came in, that same obligation was there. I don't
2 remember if there was a specific argument about the Dwight
3 Howard money.

4 But having said that, I have no problem if the parties
5 can reach an agreement, or even if there's a dispute, in
6 deciding what sort of thing to add to the jury charge. And I
7 guess it would be in the part about arguments made by the
8 parties or something like that.

9 MR. RICCO: Okay.

10 THE COURT: So why don't you take the time and see if
11 you can come up with language and let me know when you're ready
12 for either me to decide, if there's a dispute about the
13 language, what language would be appropriate or not. I take
14 it, though, that you don't -- what I'm not going to do, which I
15 theoretically could do is -- well, I'm not going to marshal the
16 evidence the way I just did, in other words, to say, well,
17 okay, with regard to 2017, you know, we had this, that, and the
18 other thing. So I'm not going to --

19 MR. RICCO: Judge, I think we'll work something out.

20 THE COURT: That's fine.

21 MR. RICCO: I think we both have the same interest on
22 this issue.

23 THE COURT: Why don't the parties do that, and just
24 let me know when you're ready to have me come out, okay. All
25 right. Thank you very much.

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1 (Recess)

2 THE COURT: I've received from the parties the
3 suggested language, and I just have a few questions. So is
4 there evidence in the record of Mr. Darden's release date,
5 which is the August 29, 2017 date?

6 MR. MEAD: I don't think so, your Honor. What's in
7 the record is the judgment.

8 THE COURT: And the three years of supervised release
9 and the judgment was -- he was sentenced on July 18 of 2016.
10 Three years from then would be -- and he didn't surrender at
11 that time, so the back date seems like it's -- the jury can
12 sort of -- in other words, there's evidence in the record that
13 says, especially since I'm going to instruct them that dates
14 are about whatever, but there's no -- I guess because I'm -- I
15 would -- in essence, if I read this, I will be injecting a fact
16 that isn't in the record.

17 MR. MEAD: I think that's exactly right, your Honor.

18 My understanding of the defense objection is in part
19 that they think there's a helpful fact for them that was not in
20 the record that contradicts something that I said. So I think
21 that injecting this fact in makes -- is the way to solve their
22 problem without conceding that we did anything wrong, we
23 thought this was a very unobtrusive place to do it. There's no
24 suggestion here that anyone did anything wrong, and it makes
25 sense because we're already talking about the prior scheme.

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1 THE COURT: So just to be clear, it's an insertion,
2 instruction nine, and it's after the first sentence, so it's
3 after the sentence "now you've also heard." And I may just
4 mention that, ladies and gentlemen, there is a sentence that I
5 had neglected or that was not included in the printout that I'm
6 going to read I want to add just for purposes of the record.
7 My recollection is at the time that there was a back and forth
8 about the admission of the judgment and whether or not it
9 should be admitted.

10 The objections, my recollection, were based upon what
11 the actual conditions said, but not necessarily based upon that
12 it wasn't relevant because for a certain period of time
13 Mr. Darden was not on supervised release. Having said that, I
14 don't -- and let me just confirm that the defense has no
15 objection to me indicating that, although not in the record --
16 although not literally taking judicial notice of it, so my
17 saying that the defendant was on supervised release for those
18 prior fraud schemes from August 29, 2017 until August 28, 2020,
19 I take it that the parties having agreed to this, you don't
20 have an objection to that, even though there's no evidence in
21 the record as to Mr. Darden's release date?

22 MR. RICCO: I think, Judge, that solves it. I like
23 the language for his prior conviction, but sometimes you can't
24 have it all the way you want. So I understand that.

25 THE COURT: So you're not objecting to --

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1 MR. RICCO: Because he was convicted of wire fraud,
2 your Honor. So I just want to be as tight as possible because
3 they got the judgment, the judgment says -- so I think it's
4 safer to say for his prior conviction.

5 THE COURT: No, no. I guess my point is -- and I just
6 want to confirm that there isn't an objection. I know the
7 language has been agreed upon, but I was pointing out that
8 there is not evidence in the record that if the jury were to
9 ask, well, where in the record does it indicate that on
10 August 29, 2017 -- there's no evidence in the record of when
11 Mr. Darden was released from prison.

12 I know that that is, in fact, the date because I went
13 back to the inmate lookup, and it's the date of that. And
14 there would be a method by which I could have, if asked during
15 the trial, have taken judicial notice of that fact or there
16 could have been evidence submitted as a certified copy of a BOP
17 record. But I just want to make sure that there's not an
18 objection to including that. Because basically it is not
19 something that, at least from my understanding, is in the
20 record.

21 MR. RICCO: One second.

22 THE COURT: Yes. And I apologize, counsel, but you
23 should consider this because if there -- I think that the jury
24 can parse through, based upon the arguments that were made and
25 the simple fact that the argument that -- 2017, so Mr. Darden

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1 was sentenced on July 18, 2016, that's part of the judgment.
2 The judgment also indicates three years of supervised release.
3 So you know, the jury -- there's a month -- there's some lag
4 time there.

5 He was sentenced to a year, which is part of the
6 judgment. So the jury could put together that he was
7 released -- that he was on supervised release from sometime in
8 the summer of July or August 2017, and then three years after
9 that there's -- 2020 is the basis. The arguments that were
10 made in summation -- and again, putting aside whether there was
11 an explicit argument about the Dwight Howard funds, the
12 argument that was made or my recollection related to when
13 Mr. Darden was on supervised release, and the motivation at
14 that time, because he was on supervised release, to create this
15 other entity. And I don't know if it was explicitly made with
16 regard to the Parsons money, but the dates, the jury can figure
17 out those dates.

18 So the reason why I'm asking about whether there's an
19 objection to that is I think the jury otherwise will be able to
20 figure that out from the evidence in the record. And I just
21 don't want to -- so that's why I need to have understanding
22 that the parties agree.

23 MR. RICCO: So Judge, because the jury can parse out
24 when he was on supervised release, the only thing they can't
25 parse out is that it ended on August 28, 2020. So if there is

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1 a date that needs to be injected, that's the date because the
2 rest of it, the jury can parse it out.

3 THE COURT: Well, but again, I mean, the question is
4 is there an objection to me including the dates that can't
5 be -- that aren't in the record, which would be -- I think it's
6 the August 29, 2017 date, which is the date of Mr. Darden's
7 release. Because I guess what I'm saying is --

8 MR. RICCO: I understand.

9 THE COURT: -- unless there's no objection, I'm just
10 going to leave it to the jury, and I'm not going to give the
11 instruction. Because I think that there isn't an argument that
12 there was no basis to -- it would be one thing if he was off
13 supervised release at the time he created the company and at
14 the time the Parsons money came in.

15 MR. RICCO: And Judge --

16 THE COURT: And then I would completely understand --

17 MR. RICCO: But Judge, actually, as to the argument
18 with respect to Parsons, we have no objection. Our objection
19 was to Dwight Howard, when he received the payments, because
20 that's what Mr. Mead said to the jury. That's what we objected
21 to. We didn't object to the part about it was created with
22 respect -- Parsons, there's no objection to that. That's
23 accurate. What this jury does not know is a judicial fact,
24 which is that at the time he received Dwight Howard's -- the
25 payments, he was no longer on supervised release. That's the

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1 objection.

2 THE COURT: Yes.

3 MR. MEAD: Can I make a proposal I think may solve
4 this problem? What if we just cut "from August 29, 2017" so it
5 just says he was on supervised release for these prior fraud
6 schemes until August 28, 2020. Then it gets in the fact that
7 the defense wants in, and it avoids the issue of a fact that
8 there's no basis in the record.

9 THE COURT: Yes.

10 MR. RICCO: No objection to Mr. Mead's suggestion.

11 THE COURT: Then I don't get whipsawed here that
12 there's an appellate issue that I'm in essence creating, and
13 that's the only reason why I was asking.

14 So what I will read to the jury is as follows: "The
15 defendant was on supervised release for those prior fraud
16 schemes until August 28, 2020." Okay? Any objection to that?

17 MR. MEAD: No, your Honor.

18 MR. RICCO: That's fine, your Honor.

19 THE COURT: Okay. I'll take that as no objection.

20 MR. RICCO: No objection, your Honor. Thank you.

21 THE COURT: All right. Okay. Is there anything else
22 that we need to take up before we get the jury?

23 MR. MEAD: No.

24 MR. RICCO: No. I'm just curious how long does the
25 Court anticipate keeping the jury today?

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Charge

1 THE COURT: I need to speak to the folks. I would see
2 what the jury -- well, I will read the summation. I will then
3 ask -- the jury will go back, and I'll say they're going to get
4 the exhibits and I'll say they're obviously going to vote on a
5 foreperson. And I'll say that they should indicate to the
6 court security officer how late they wish to stay tonight.

7 MR. RICCO: That's fine, Judge.

8 THE COURT: And so we'll see. Again, I think an hour
9 and change probably for the instructions, although I haven't --
10 sat down to say I think it's about a minute or 90 seconds per
11 page, something like that, so we'll see. But that's what I
12 would intend to ask them. All right? So we'll take our cue
13 from them.

14 (In open court; jury present)

15 THE COURT: Ladies and gentlemen, as I mentioned
16 before the break, each of you should have a copy of the
17 instructions, as well as a copy of the verdict sheet. So we're
18 going I'm going to begin with reading the jury charge, and the
19 actual remarks begin on page 4.

20 Introductory remarks.

21 Members of the jury, you have now heard all of the
22 evidence in the case as well as the final arguments of the
23 parties. It is clear to me that you have paid careful
24 attention to the evidence, and I am confident that you will act
25 together with fairness and impartiality reach a just verdict in

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Charge

1 this case.

2 Now it is time for me to instruct you as to the law
3 that governs the case. There are three parts to these
4 instructions. First, I'm going to give you some general
5 instructions about your role and about how you are to go about
6 deciding the facts of the case. These instructions really
7 would apply to just about any trial.

8 Second, I will give you some specific instructions
9 about the legal rules that apply to this particular case.

10 Third, I will give you some final instructions about
11 procedures you will follow in discussing the case and reaching
12 a verdict.

13 Listening to these instructions may not be easy. It
14 is important, however, that you listen carefully and
15 concentrate. I ask you for patience, cooperation, and
16 attention. You will notice that I am reading these
17 instructions from a prepared text. It would be more lively, no
18 doubt, if I just improvised, but it's important that I not do
19 that. The law is made up of words, and those words are very
20 carefully chosen. So when I tell you the law, it's critical
21 that I use exactly the right words.

22 Because my instructions cover many points, I have
23 given each of you a copy of my instructions to follow along.
24 In addition, you may take your copy of the instructions with
25 you for reference during your deliberations. You should not

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Charge

1 single out any instruction as alone stating the law, but you
2 should consider my instructions as a whole when you retire to
3 deliberate in the jury room. Please listen carefully and
4 concentrate on what I am saying.

5 General introductory instructions.

6 Instruction No. 1, role of the Court.

7 My duty at this point is to instruct you as to the
8 law. It is your duty to accept these instructions of law and
9 to apply them to the facts as you determine them. With respect
10 to legal matters, you must take the law as I give it to you.
11 If any attorney has stated a legal principle different from any
12 that I state to you in my instructions, it is my instructions
13 that you must follow. You must not substitute your own notions
14 or opinions of what the law is or ought to be.

15 Instruction No. 2, role of the jury.

16 As members of the jury, you are the sole and exclusive
17 judges of the facts. You pass judgment upon the evidence. You
18 determine the credibility of the witnesses. You resolve such
19 conflicts as there may be in the testimony. You draw whatever
20 reasonable inferences you decide to draw from the facts as you
21 have determined them, and you determine the weight of the
22 evidence.

23 Do not conclude from any of my questions or any of my
24 rulings on objections or anything else I have done during this
25 trial that I have any view as to the credibility of the

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1 witnesses or how you should decide the case.

2 It is your sworn duty, and you have taken the oath as
3 jurors, to determine the facts. Any opinion I might have
4 regarding the facts is of absolutely no consequence.

5 Instruction No. 3, role of counsel.

6 It is the duty of the attorneys to object when the
7 other side offers testimony or other evidence that the attorney
8 believes is not properly admissible. It is my job to rule on
9 those objections. Therefore, why an objection was made or why
10 I rule on it the way I did is not your concern. You should
11 draw no inference from the fact that an attorney objects to any
12 evidence. Nor should you draw any inference from the fact that
13 I might have sustained or overruled an objection.

14 The personalities and conduct of counsel in the
15 courtroom are not in any way at issue. If you formed reactions
16 of any kind to any of the lawyers in the case, favorable or
17 unfavorable, whether you approved or disapproved of their
18 behavior as advocates, those reactions should not enter into
19 your deliberations.

20 From time to time, the lawyers and I had conferences
21 out of your hearing referred to as sidebars. These conferences
22 involved procedural and other matters, and none of the events
23 relating to these conferences should enter into your
24 deliberations at all.

25 Instruction No. 4, sympathy or bias.

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1 Under your oath as jurors, you are not to be swayed by
2 sympathy or prejudice. You are to be guided solely by the
3 evidence in this case, and the crucial bottom-line question
4 that you must ask yourselves as you sift through the evidence
5 is: Has the government proven the guilt of the defendant
6 beyond a reasonable doubt?

7 It is for you alone to decide whether the government
8 has proven that the defendant is guilty of the crimes charged
9 solely on the basis of the evidence presented in court and
10 subject to the law as I explain it to you. It must be clear to
11 you that once you let fear or prejudice or bias or sympathy –
12 whether explicit or implicit – interfere with your thinking,
13 there is a risk that you will not arrive at a true and just
14 verdict.

15 If you have a reasonable doubt as to the defendant's
16 guilt, you should not hesitate for any reason to find a verdict
17 of acquittal for the defendant. But on the other hand, if you
18 find that the government has met its burden of proving the
19 defendant's guilt beyond a reasonable doubt, you should not
20 hesitate because of sympathy or any other reason to render a
21 verdict of guilty for the defendant.

22 In determining whether the government has proven the
23 charges beyond a reasonable doubt, you should not consider the
24 question of possible punishment in the event you are to find
25 the defendant guilty as charged. It is not your concern, and

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1 you should not give any consideration to that issue in
2 determining what your verdict will be. Therefore, I instruct
3 you not to consider punishment or possible punishment at all in
4 your deliberations concerning whether the government has proved
5 the charges beyond a reasonable doubt. Similarly, it would be
6 improper for to you allow any feelings you might have about the
7 nature of the crimes charged to interfere with your
8 decision-making process. Your verdict must be based
9 exclusively upon the evidence or lack of evidence in the case.

10 Instruction No. 5, all persons equal before the law.

11 In reaching your verdict, you must remember that all
12 parties stand equal before a jury in the courts of the United
13 States. The fact that the government is a party and the
14 prosecution is brought in the name of the United States does
15 not entitle the government or its witnesses to any greater
16 consideration than that accorded to any other party. By the
17 same token, you must give it no less deference. The government
18 and the defendant stand on equal footing before you.

19 It would be improper for you to consider, in reaching
20 your decision as to whether the government sustained its burden
21 of proof, any personal feelings you may have about the
22 defendant's race, religion, national origin, sex, age, or
23 political views. Similarly, it would be improper for you to
24 consider any personal feelings you may have about the race,
25 religion, national origin, sex, age, or political views of any

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1 witness or anyone else involved in this case. All persons are
2 entitled to the same presumption of innocence, and the
3 government has the same burden of proof with respect to all
4 persons. Your verdict must be based solely on the evidence or
5 the lack of evidence.

6 Instruction number six, what is and is not evidence.

7 In determining the facts, you must rely upon your own
8 recollection of the evidence. The evidence in this case is the
9 sworn testimony of the witnesses and the exhibits received in
10 evidence. However, testimony that I have stricken or excluded
11 is not evidence and may not be considered by you in rendering
12 your verdict.

13 The only exhibits that are evidence in this case are
14 those that were received in evidence. Exhibits marked for
15 identification but not admitted are not evidence, nor are
16 materials that were used only to refresh a witness's
17 recollection.

18 As I told you at the start of this case, statements
19 and arguments by lawyers are not evidence because the lawyers
20 are not witnesses. Similarly, demonstratives used by the
21 lawyers during the summations are not evidence. What they have
22 said to you in their opening statements and in their summations
23 is intended to help you understand the evidence to reach your
24 verdict. However, if your recollection of the facts differs
25 from the lawyers' statements, it is your recollection that

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1 controls.

2 For the same reasons, you are not to consider a
3 lawyer's questions as evidence. It is the witnesses' answers
4 that are evidence, not the questions.

5 Finally, any statements that I may have made do not
6 constitute evidence. It is for you alone to decide the weight,
7 if any, to be given to the testimony you have heard and the
8 exhibits you have seen.

9 Instruction No. 7, direct and circumstantial evidence.

10 Generally, there are two types of evidence that you
11 may consider in reaching your verdict. One type of evidence is
12 direct evidence. Direct evidence is testimony by a witness
13 about something he or she knows by virtue of his or her own
14 senses – something he or she has seen, felt, touched, or heard.
15 For example, if a witness testified that when she left her
16 house this morning, it was raining, that would be direct
17 evidence about the weather.

18 Circumstantial evidence is evidence from which you may
19 infer the existence of certain facts. For example, assume that
20 when you came into the house this morning, the sun was shining
21 and it was a nice day. Assume that the courtroom blinds were
22 drawn and that you could not look outside. As you were sitting
23 here, someone walked in with an umbrella, which was dripping
24 wet. Then a few minutes later, another person entered with a
25 wet raincoat. Now, you cannot look outside of the courtroom,

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1 and you cannot see whether or not it is raining, so you have no
2 direct evidence of that fact. But on the combination of facts
3 that I have asked you to assume, it would be reasonable and
4 logical for you to conclude that it had been raining.

5 That is all there is to circumstantial evidence. You
6 infer on the basis of reason and experience and common sense
7 from one established fact the existence or nonexistence of some
8 other fact.

9 As you can see, the matter of drawing inferences from
10 facts in evidence is not a matter of guesswork or speculation.
11 An inference is a logical factual conclusion which you might
12 reasonably draw from other facts that have been proven. Many
13 material facts – such as what a person was thinking or
14 intending – can rarely be proven by direct evidence.

15 Circumstantial evidence is as valuable as direct
16 evidence. The law makes no distinction between direct and
17 circumstantial evidence, but simply requires that before
18 convicting a defendant, the jury must be satisfied of the
19 defendant's guilt beyond a reasonable doubt based on all the
20 evidence in the case, circumstantial and direct.

21 There are times when different inferences may be drawn
22 from the evidence. The government asks you to draw one set of
23 inferences. The defendant asks to you draw another. It is for
24 you and for you alone to decide what inferences you will draw.

25 Instruction No. 8, evidence not admitted for the

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1 truth.

2 During this trial, you have heard that certain
3 evidence was admitted for a limited purpose, namely, not as
4 evidence of the truth of the matters asserted in that evidence.
5 This means that you cannot use the statements contained in that
6 evidence as proof of the facts asserted in that evidence. You
7 may only consider this evidence for the purpose for which this
8 evidence was admitted, for example, but not limited to, bias,
9 motive, state of mind, or knowledge of another person.

10 Instruction No. 9, other acts evidence.

11 Now, you also heard that the defendant engaged in
12 misconduct that is not charged in this indictment, including
13 prior fraud schemes engaged in by the defendant.

14 Now, ladies and gentlemen, the next sentence was
15 omitted from the instruction, but I'm going to read it to you.

16 The defendant was on supervised release for those
17 prior fraud schemes until August 28, 2020. The defendant is
18 not on trial for committing those acts. Accordingly, you may
19 not consider the evidence of other uncharged bad acts as a
20 substitute for proof that the defendant committed the crimes
21 with which he is charged here. Nor may you consider that
22 evidence as proof that the defendant has a criminal personality
23 or bad character. The evidence was admitted for limited
24 purposes, and you may consider it for those purposes alone.

25 More specifically, you may consider the evidence you

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1 have heard regarding the defendant's fraud schemes as relevant
2 to the defendant's intent, knowledge, identity, *modus operandi*,
3 and absence of mistake. *Modus operandi* means method of
4 operating or doing things.

5 Instruction No. 10, burden of proof and presumption of
6 innocence.

7 Now I will instruct you on the presumption of
8 innocence and the government's burden of proof in this case.
9 Mr. Darden has pleaded not guilty. By doing so, he denies the
10 charges in the indictment. Thus, the government has the burden
11 of proving the charges against him beyond a reasonable doubt.
12 It is for you, the jury, to decide if the prosecution has met
13 that burden. If the government fails, your verdict must be not
14 guilty.

15 This burden of proof never shifts to Mr. Darden. A
16 defendant does not have to prove his or her innocence. On the
17 contrary, he or she is presumed to be innocent of the charges
18 contained in the indictment. This presumption of innocence was
19 in the defendant's favor at the start of the trial, continued
20 in his favor throughout the entire trial, is in his favor even
21 as I instruct you now, and continues in his favor during the
22 course of your deliberations in the jury room. It is removed
23 if and only if you, as members of the jury, are satisfied that
24 the government has sustained its burden of proving the
25 defendant's guilt beyond a reasonable doubt.

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1 Instruction No. 11, reasonable doubt.

2 The question that naturally comes up is what is a
3 reasonable doubt? The words almost define themselves. It is a
4 doubt founded in reason and arising out of the evidence in the
5 case or lack of evidence. It is a doubt that a reasonable
6 person would have after carefully weighing all of the evidence.

7 Reasonable doubt is a doubt that appeals to your
8 reason, your judgment, your experience, your common sense. It
9 is not caprice, whim, or speculation. It is not sympathy for
10 the defendant or any witness or any party in the case. It is
11 not an excuse to avoid an unpleasant duty.

12 If, after a fair and impartial consideration of all
13 the evidence, you can candidly and honestly say that you are
14 not satisfied of the defendant's guilt as to any charge, that
15 you do not have an abiding conviction of the defendant's guilt
16 as to that charge, in sum, if you have such a doubt as would
17 cause you as a prudent person to hesitate before acting in
18 matters of importance to yourself, then you have a reasonable
19 doubt. In that circumstance, it is your duty to find the
20 defendant not guilty of that charge.

21 If, on the other hand, after fair and impartial
22 consideration of all the evidence, you can candidly and
23 honestly say that you are satisfied of the defendant's guilt as
24 to any crime charged in this case, that you do have an abiding
25 belief of the defendant's guilt as to that charge, (in other

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1 words, a belief that you would be willing to act upon without
2 hesitation in important matters in the personal affairs of your
3 own life), then you have no reasonable doubt, and under such
4 circumstances, it is your duty to convict the defendant.

5 One final word on the subject: Reasonable doubt does
6 not mean beyond all possible doubt. It is practically
7 impossible for a person to be absolutely and completely
8 convinced of any disputed fact which by its nature is not
9 susceptible to mathematical certainty. In a criminal case, the
10 law is that it is sufficient that the defendant's guilt be
11 established beyond a reasonable doubt, not beyond all possible
12 doubt.

13 Instruction No. 12, credibility of witnesses.

14 You have had the opportunity to observe the witnesses.
15 It is your job to decide how believable each witness was in his
16 or her testimony. You are the sole determiners of the
17 credibility of each witness and of the importance of witness
18 testimony. How do you evaluate the credibility or
19 believability of the witnesses? The answer is that you use
20 your common sense, judgment, and experience.

21 You watched the witnesses testify. You should ask
22 yourselves did the witness impress you as honest, open, and
23 candid? Or did the witness appear evasive, as though the
24 witness was trying to hide something?

25 If you find that a witness is intentionally telling a

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1 falsehood, that is always a matter of importance that you
2 should weigh carefully. If you find any witness has lied under
3 oath at this trial, you should view the testimony of such a
4 witness cautiously and weigh it with great care. You may
5 reject the entirety of the witness testimony, part of it, or
6 none of it. It is for you to decide how much of any witness's
7 testimony, if any, you wish to credit.

8 A witness may be inaccurate, contradictory, or even
9 untruthful in some aspects and yet entirely believable and
10 truthful in other aspects. It is for to you determine whether
11 such untruths or inconsistencies are significant or
12 inconsequential, and whether to accept or reject all or to
13 accept some and to reject the balance of the testimony of any
14 witness.

15 In evaluating the credibility of the witnesses, you
16 should take into account any evidence that the witness who
17 testified may benefit in some way from the outcome of this
18 case. If you find that any witness whose testimony you are
19 considering may have an interest in the outcome of this trial,
20 then you should bear that factor in mind when evaluating the
21 credibility of his or her testimony and accept it with great
22 care. This is not to suggest that any witness who has an
23 interest in the outcome of a case would testify falsely. It is
24 for you to decide to what extent, if at all, the witness's
25 interest has affected or colored his or her testimony.

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1 You are not required to accept testimony even though
2 the testimony is not contradicted and the witness's testimony
3 is not challenged. You may decide because of the witness's
4 bearing or demeanor, or because of the inherent improbability
5 of the testimony, or for other reasons sufficient to satisfy
6 yourselves that the testimony is not worthy of belief. On the
7 other hand, you may find, because of a witness's bearing and
8 demeanor and based upon your consideration of all the other
9 evidence in the case, that the witness is truthful.

10 In deciding whether to believe a witness, keep in mind
11 that people sometimes forget things. You need to consider,
12 therefore, whether in such a situation the witness' testimony
13 reflects an innocent lapse of memory or an intentional
14 falsehood, and that may depend on whether it has to do with an
15 important fact or with only a small detail. It is not the
16 number of witnesses called in a case but rather their
17 credibility when called to the witness stand that is directly
18 at issue.

19 There is no magic formula by which you can evaluate
20 testimony. You bring to this courtroom all your experience and
21 common sense. You determine for yourselves in many
22 circumstances the reliability of statements that are made by
23 others to you and upon which you are asked to rely and act. You
24 may use the same tests here that you use in your everyday
25 lives.

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1 Instruction No. 13, uncalled witnesses equally
2 available to both sides.

3 There are people whose names you have heard during the
4 course of trial, but who did not appear here to testify. I
5 instruct you that each party had an equal opportunity, or lack
6 of opportunity, to call any of these witnesses. Therefore, you
7 should not draw any inferences or reach any conclusions as to
8 what they would have testified to had they been called. Their
9 absence should not affect your judgment in any way.

10 You should, however, remember my instruction that the
11 law does not impose on a defendant in a criminal case the
12 burden or duty of calling any witness or producing any
13 evidence. The burden of proof remains at all times with the
14 government.

15 Instruction No. 14, law enforcement and government
16 witnesses.

17 You have heard the testimony of law enforcement
18 witnesses and other government employees. The fact that a
19 witness may be employed by the federal government as a law
20 enforcement agent or employee does not mean that his or her
21 testimony is deserving of more or less consideration or greater
22 or lesser weight than that of other witnesses. As with all
23 witnesses, it is up to you to decide, after reviewing all the
24 evidence, what weight to give the testimony of law enforcement
25 and federal employee witnesses.

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1 Instruction No. 15, defendant's right not to testify.

2 The defendant did not testify in this case. Under our
3 Constitution, a defendant has no obligation to testify or to
4 present any evidence because it is the government's burden to
5 prove a defendant guilty beyond a reasonable doubt. That
6 burden remains with the government throughout the entire trial
7 and never shifts to a defendant. A defendant is never required
8 to prove that he is innocent.

9 You may not attach any significance to the fact that
10 the defendant did not testify. No adverse inference against
11 him may be drawn by you because the defendant did not take the
12 witness stand. You may not consider this against the defendant
13 in any way in your deliberations in the jury room.

14 Instruction No. 16, other individuals not on trial.

15 Some of the people who may have been involved in the
16 events leading to this trial are not on trial. There is no
17 requirement that all members of a conspiracy charged are
18 prosecuted or tried together in the same proceeding.

19 You may not draw any inference, favorable or
20 unfavorable, toward the government or the defendant from the
21 fact that any person was not named as a defendant in this case,
22 and you may not speculate as to the reasons why other people
23 are not on trial before you now. Those matters are wholly
24 outside your concern and have no bearing on your function as
25 jurors in deciding the case before you.

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1 Instruction No. 17, preparation of witnesses.

2 You have heard evidence during the trial that some
3 witnesses have discussed the facts of the case and their
4 testimony with lawyers before the witnesses appeared in court.
5 Although you may consider that fact when you evaluate a
6 witness's credibility, I should tell you that there is nothing
7 unusual or improper about a witness meeting with lawyers before
8 testifying so that the witness can be aware of the subjects he
9 or she will be questioned about, focus on those subjects, and
10 have the opportunity to review relevant exhibits before being
11 questioned about them. Such consultation helps conserve your
12 time and the Court's time.

13 In fact, it would be unusual for a lawyer to call a
14 witness without such consultation. Again, the weight you give
15 to the fact or the nature of the witness's preparation for his
16 or her testimony and what inferences you draw from such
17 preparation are matters completely within your discretion.

18 Instruction No. 18, use of evidence obtained pursuant
19 to searches.

20 You have heard testimony about evidence seized
21 pursuant to search warrants signed by a judge from email
22 accounts, electronic devices, and a home. Evidence obtained
23 from these searches was properly admitted in this case and may
24 properly be considered by you. Searches of online accounts,
25 electronic devices, and homes are entirely appropriate law

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1 enforcement actions. Whether you approve or disapprove of how
2 such evidence was obtained should not enter into your
3 deliberations because I now instruct you that the government's
4 use of this evidence is entirely lawful. You must, therefore,
5 regardless of your personal opinions, give this evidence full
6 consideration along with all the other evidence in the case in
7 determining whether the government has proven the defendant's
8 guilt beyond a reasonable doubt. Once again, however, it is
9 for you to decide what weight, if any, to give to this
10 evidence.

11 Instruction No. 19, particular investigative
12 techniques not required.

13 There is no legal requirement that the government
14 prove its case through any particular means. While you are to
15 carefully consider the evidence adduced by the government, you
16 are not to speculate as to why the government used the
17 techniques that it did or why it did not use other techniques.
18 The government is not on trial, and the law enforcement
19 techniques are not your concern.

20 Your concern is to determine whether or not, based
21 upon the evidence or lack of evidence, the guilt of the
22 defendant has been proven beyond a reasonable doubt.

23 Instruction No. 20, inferences.

24 During the trial you have heard the attorneys use the
25 term "inference" or "infer." In their arguments, they have

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1 asked you to infer on the basis of your reason, experience, and
2 common sense, from one or more established facts, the existence
3 of some other fact.

4 An inference is not a suspicion or a guess. It is a
5 logical factual conclusion that you might reasonably view from
6 other facts that have been proven. In drawing inferences, you
7 should exercise your common sense.

8 So while you are considering the evidence presented to
9 you, you are permitted to draw from the facts that you find to
10 be proven such reasonable inferences as would be justified in
11 light of your experience.

12 There are occasions when particular established facts,
13 whether proved circumstantially or directly, might yield an
14 inference in one direction or in the opposite direction. The
15 government might ask you to draw one inference. A defendant
16 may say, well, the same facts point in the opposite direction,
17 so you should draw the opposite inference. However, you are
18 the ones who make up your mind about what, if any, inferences
19 to draw, nobody else, not me, not the lawyers.

20 Here again, let me remind you that, whether based upon
21 direct or circumstantial evidence or on the logical, reasonable
22 inferences drawn from such evidence, you must be satisfied of
23 the guilt of the defendant beyond a reasonable doubt before you
24 may convict him.

25 Instruction No. 21, all available evidence need not be

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1 introduced.

2 The law does not require any party to call as
3 witnesses all persons who may have been present at any time or
4 place involved in the case or who may appear to have some
5 knowledge of the matter in issue at this trial. Nor does the
6 law require any party to produce as exhibits all relevant
7 papers and things available to either party during the course
8 of the trial.

9 Instruction No. 22, charts and summaries.

10 There is evidence before you in the form of charts and
11 summaries. Those exhibits purport to summarize the underlying
12 evidence that was used to prepare them. I admitted these
13 charts and summaries into evidence in place of or in addition
14 to the underlying documents that they represent in order to
15 save time and avoid unnecessary inconvenience. They are no
16 better than the documents upon which they are based.
17 Therefore, you are to give no greater consideration to these
18 charts or summaries than you would give to the evidence upon
19 which they are based. It is for you to decide whether they
20 correctly present the information contained in the testimony
21 and in the exhibits on which they were based.

22 Instruction No. 23, redactions.

23 There are, among the exhibits received in evidence,
24 some documents that are redacted. "Redacted" means that part
25 of the document or recording was taken out. You are to concern

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1 yourself only with the part of the item that has been admitted
2 into evidence. You should not consider any possible reason why
3 the other part of it has been deleted.

4 Substantive charges.

5 Instruction No. 24, the indictment.

6 The defendant, who I may refer to by name as Calvin
7 Darden, Jr. or as "defendant" has been charged in what is
8 called an indictment. An indictment is simply an accusation.
9 It is no more than the means by which a criminal case is
10 started. It is not evidence. It is not proof of the
11 defendant's guilt. It creates no presumption, and it permits
12 no inference that the defendant is guilty. You are to give no
13 weight to the fact that an indictment has been returned against
14 the defendant.

15 I will first summarize the offenses charged in the
16 indictment and then explain in detail the elements of each
17 charged offense.

18 Instruction No. 25, summary of indictment.

19 Count One of the indictment charges that from at least
20 in or about 2019 through at least in or about 2021, in the
21 Southern District of New York and elsewhere, the defendant
22 conspired and agreed with other people to commit wire fraud and
23 bank fraud.

24 Count Two of the indictment charges that from at least
25 in or about 2019 through at least in or about 2021, in the

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1 Southern District of New York and elsewhere, the defendant
2 committed wire fraud.

3 Count Three of the indictment charged that from at
4 least in or about 2020 through at least in or about 2021, in
5 the Southern District of New York and elsewhere, the defendant
6 committed bank fraud.

7 Count Four of the indictment charges that from at
8 least in or about 2019 through in or about 2021, in the
9 Southern District of New York and elsewhere, the defendant
10 conspired and agreed with others to commit money laundering.

11 Count Five of the indictment charges that from at
12 least in or about 2019 through at least in or about 2021, in
13 the Southern District of New York and elsewhere, the defendant
14 committed money laundering.

15 Instruction No. 26, multiple counts.

16 First, as I mentioned, the indictment contains five
17 counts. Each count charges the defendant with a different
18 crime. You must, as a matter of law, consider each count of
19 the indictment separately, and you must return a separate
20 verdict of guilty or not guilty for each count in which the
21 defendant is charged. Whether you find the defendant guilty or
22 not guilty as to one offense should not affect your verdict as
23 to any other offense charged unless you are instructed
24 otherwise.

25 Instruction No. 27, variance in dates.

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1 As I've described the indictment, you may have noticed
2 that it refers to various dates or times. It does not matter
3 if the evidence you heard at trial indicates that a particular
4 act occurred on a different date, and it is not essential that
5 the government prove that the charged offenses started and
6 ended on any specific dates. The law requires only a
7 substantial similarity between the dates alleged in the
8 indictment and the dates established by the evidence.

9 Instruction No. 28, conspiracy and substantive counts.

10 As I have told you, Count One and Four of the
11 indictment charge the defendant with different crimes of
12 conspiracy. The other counts, Counts Two, Three, and Five,
13 charge what are called substantive crimes.

14 A conspiracy count is different from a substantive
15 count. A conspiracy charge, generally speaking, alleges that
16 two or more persons agreed together to accomplish an unlawful
17 objective. The focus of a conspiracy count, therefore, is on
18 whether there was an unlawful agreement.

19 A substantive count, on the other hand, charges a
20 defendant with responsibility for the actual commission of an
21 offense. A substantive offense, therefore, may be committed by
22 a single person, and it need not involve any agreement with
23 anyone else.

24 A conspiracy to commit a crime is an entirely separate
25 and different offense from a substantive crime, the commission

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1 of which may be an object of the conspiracy. And since the
2 essence of the crime of conspiracy is an agreement or
3 understanding to commit a crime, it does not matter if the
4 crime, the commission of which was an objective of the
5 conspiracy, ever was committed or accomplished.

6 In other words, if a conspiracy exists and certain
7 other requirements are met, it is punishable as a crime, even
8 if its purpose is not accomplished. Consequently, in a
9 conspiracy charge, there is no need to prove that the crime or
10 crimes that were the objective or objectives of the conspiracy
11 actually were committed or accomplished.

12 By contrast, conviction on a substantive count
13 requires proof that the crime charged actually was committed,
14 but does not require proof of an agreement. With respect to
15 the substantive counts, you should be aware also that there are
16 alternative theories on the basis of which you may find a
17 defendant guilty. While I am going to explain these theories
18 in more detail, I want to take a moment to outline them
19 briefly.

20 The first theory is that the defendant committed a
21 substantive crime charged in the indictment.

22 The second theory is that the defendant, with criminal
23 intent, willfully caused someone else to engage in certain
24 actions that resulted in the commission of a substantive crime
25 charged in the indictment. I am going to refer to both of

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1 those two theories that I just outlined for you as involving a
2 claim that a defendant is guilty of a crime as a principal.

3 The third theory is that a person other than the
4 defendant committed the crime charged in the indictment and the
5 defendant aided and abetted the commission of that crime. I
6 will refer to that theory as a claim that the defendant is
7 guilty of a crime as an aider and abettor.

8 For the same of convenience, in ordering my
9 instructions to you, I am going to instruct you first with
10 respect to the counts that charge substantive crimes, Counts
11 Two, Three, and Five. I will instruct you initially on the
12 first two theories of liability, namely, that the defendant is
13 guilty as a principal of the substantive crimes charged in the
14 indictment either because he committed the substantive crimes
15 or because he, with criminal intent, caused someone else to
16 commit the substantive crimes.

17 I will then instruct you on the third theory of
18 liability – that is, the alternative theory that the defendant
19 is guilty as an aider and abettor. Finally, I will instruct
20 you on the conspiracy counts.

21 Instruction No. 29, Count Two: Wire fraud – elements.

22 Count Two charges the defendant with wire fraud.

23 To sustain its burden of proof with respect to the
24 offense charged in Count Two, the government must prove beyond
25 a reasonable doubt the following three elements:

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1 First, that there was a scheme or artifice to defraud
2 or to obtain or retain money or property by materially false
3 and fraudulent pretenses, representations, or promises.

4 Second, that the defendant knowingly and willfully
5 participated in the scheme or artifice to defraud, with
6 knowledge of its fraudulent nature and with specific intent to
7 defraud.

8 Third, that in execution of that scheme, the defendant
9 used or caused the use of interstate wires.

10 I will discuss each in turn.

11 Instruction No. 30, Count Two: Wire fraud – first
12 element.

13 The first element the government must prove beyond a
14 reasonable doubt is that there was a scheme or artifice to
15 defraud the victims of money or property by false or fraudulent
16 pretenses, representations, or promises.

17 A scheme or artifice to defraud is a plan, device, or
18 course of action to obtain or retain money or property by means
19 of false or fraudulent statements, representations, promises,
20 or pretenses.

21 A statement or representation is false if it is untrue
22 when made and was then known to be untrue by the person making
23 it or causing it to be made. A statement may also be false if
24 it contains half truths, conceals material facts, or is
25 ambiguous or incomplete in a manner that makes what is said or

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1 represented misleading or deceptive.

2 The deception need not be based upon spoken or written
3 words alone. The arrangement of the words, the circumstances
4 in which they are used, or the defendant's conduct may convey
5 the false and deceptive appearance. If there is deception, the
6 manner in which it is accomplished does not matter.

7 Statements, representations, promises, or pretenses
8 are fraudulent if they were made falsely and with intent to
9 deceive.

10 A scheme to defraud need not be shown by direct
11 evidence, but may be established by all the circumstances and
12 facts in the case.

13 The false or fraudulent statement, representation,
14 promise, or pretense, must relate to a material fact or matter.
15 A material fact is one that would be expected to influence or
16 that is capable of influencing the decision of a reasonable
17 person.

18 It is not necessary for the government to prove that a
19 false or fraudulent representation or statement was made prior
20 to a person's decision to part with money or property. Rather,
21 if after having obtained money or property, the defendant
22 devised or participated in a fraudulent scheme to deprive the
23 alleged victim of that money or property by keeping the money
24 or property through making a subsequent false or fraudulent
25 representation as to a material fact, that is sufficient to

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1 establish the existence of a scheme to defraud.

2 (Continued on next page)

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1 THE COURT: It is not necessary for the Government to
2 prove that the scheme to defraud actually succeeded, that any
3 particular person actually relied upon a statement or
4 representation, or that any victim actually suffered damages as
5 a consequence of any false or fraudulent representations
6 promises, or pretenses. Nor do you need to find that the
7 defendant profited from the fraud or realized any gain. You
8 must concentrate on whether there was such a scheme, not the
9 consequences of the scheme, although proof concerning
10 accomplishment of the goals of the scheme may be persuasive
11 evidence of the existence of the scheme itself. In determining
12 whether a scheme to defraud existed, it is irrelevant whether a
13 victim might have discovered the fraud if he, she, or it had
14 looked more closely or probed more extensively. A victim's
15 negligence or gullibility in failing to discover a fraudulent
16 scheme is not a defense to wire fraud. As noted above, to
17 convict on the wire fraud charge, the Government must prove
18 beyond a reasonable doubt that the false or fraudulent
19 statements or representations were material, and that the
20 defendant acted with fraudulent intent. You have seen evidence
21 of a promissory note between Dwight Howard and the Darden
22 Sports Group. Language in a contract, such as a promissory note
23 may be relevant in considering whether false or fraudulent
24 statements or representations outside the contract were
25 material and whether the defendant acted with fraudulent

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1 intent. But I instruct you that language in a contract, such as
2 a promissory note, does not render false or fraudulent
3 statements or representations made outside the contract
4 immaterial as a matter of law, and a defendant cannot use
5 contractual limitations to avoid criminal liability for
6 otherwise material misrepresentations made with intent to
7 defraud. If you find the Government has sustained its burden
8 of proof that a scheme to defraud existed, you should next
9 consider the second element.

10 Count Two: Wire Fraud—Second Element

11 The second element that the Government must prove
12 beyond a reasonable doubt is that the defendant participated in
13 the scheme to defraud knowingly, willfully, and with specific
14 intent to defraud. To act “knowingly” means to act
15 intentionally and voluntarily, and not because of ignorance,
16 mistake, accident, or carelessness. To act “willfully” means
17 to act voluntarily and with wrongful purpose. To prove that
18 the defendant acted with specific intent to defraud, the
19 Government must prove that he acted with intent to deceive for
20 the purpose of depriving the relevant victim of money or
21 property. The Government need not prove that the victim
22 actually was harmed, only that the defendant contemplated some
23 actual harm or injury to the victim in question. In addition,
24 the Government need not prove that the intent to defraud was
25 the only intent of the defendant. A defendant may have the

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1 requisite intent to defraud even if the defendant was motivated
2 by other lawful purposes as well. To participate in a scheme
3 means to engage in it by taking some affirmative step to help
4 it succeed. Merely associating with people who are
5 participating in a scheme is not participation. It is not
6 necessary that the defendant originated the scheme to defraud.
7 It is sufficient if you find that a scheme to defraud existed,
8 even if someone else originated it, and that the defendant
9 while aware of the scheme's existence, knowingly and willfully
10 participated in it with intent to defraud.

11 Nor is it required that the defendant participated in
12 or had knowledge of all of the operations of the scheme. The
13 responsibility of the defendant is not governed by the extent
14 of his participation. It is not necessary that the defendant
15 have participated in the alleged scheme from the beginning. A
16 person who comes in at a later point with knowledge of the
17 scheme's general operation, although not necessarily all of its
18 details, and who knowingly acts in a way to further its goals,
19 becomes a participant in the scheme and is legally responsible
20 for all that may have been done in the past in furtherance of
21 the criminal objective and all that is done subsequently. Even
22 if the defendant participated in the scheme to a degree less
23 than others, he nevertheless is equally guilty as long as the
24 defendant knowingly participated in the scheme to defraud with
25 knowledge of its general scope and purpose and with specific

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1 intent to defraud. Because an essential element of the crime
2 charged is intent to defraud, it follows that good faith on the
3 part of a defendant is a complete defense to the charge of wire
4 fraud. An honest belief in the truth of the representations
5 made or caused to be made by a defendant is a complete defense
6 however inaccurate the statements may turn out to be. Moreover,
7 a defendant has no burden to establish a defense of good faith;
8 it remains the Government's burden to prove fraudulent intent
9 and the consequent lack of good faith beyond a reasonable
10 doubt. However, in considering whether or not a defendant acted
11 in good faith, you are instructed that an honest belief on the
12 part of the defendant, if such a belief existed, that
13 ultimately everything would work out to the benefit of the
14 alleged victims does not necessarily mean that the defendant
15 acted in good faith. If the defendant knowingly and willfully
16 participated in the scheme with the intent to deceive the
17 victim in question for the purpose of depriving the victim of
18 money or property, even if only for a period of time, then no
19 amount of honest belief on the part of the defendant that the
20 victim ultimately would be benefited will excuse false
21 representations that a defendant knowingly and willfully made
22 or caused to be made. Likewise, a venture commenced in good
23 faith may become fraudulent if it is continued after a
24 fraudulent intent has been formed. Therefore, good faith is no
25 defense when the defendant first made representations in good

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1 faith but later, during the time charged in the Indictment, the
2 defendant realized that the representations were false and
3 nevertheless deliberately continued to make them. You must
4 review and put together all the circumstances in deciding
5 whether the Government has established beyond a reasonable
6 doubt that the defendant devised or participated in a scheme to
7 defraud knowingly, willfully and with the intent to defraud, or
8 whether he acted in good faith. Direct proof of knowledge,
9 willfulness, and fraudulent intent is almost never available.
10 It would be a rare case where it could be shown that a person
11 wrote or stated that as of a given time in the past, he
12 committed an act with fraudulent intent. Such direct proof is
13 not required. Instead the ultimate facts of knowledge,
14 willfulness, and intent, though subjective, may be established
15 by circumstantial evidence, based upon a person's words, his
16 conduct, his acts, and all the surrounding circumstances
17 disclosed by the evidence and the rational or logical
18 inferences that may be drawn from them. You may also infer, but
19 are not required to infer, that people intend the natural and
20 probable consequences of their actions. Accordingly, when the
21 necessary result of a scheme is to injure others, fraudulent
22 intent may be inferred from the scheme itself. As I instructed
23 you earlier circumstantial evidence, if believed, is of no less
24 value than direct evidence.

25 Count Two: Wire Fraud-Third Element

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1 The third and final element that the Government must
2 establish beyond a reasonable doubt is that one or more
3 interstate or foreign wires were used in furtherance of the
4 scheme to defraud. An "interstate wire" means a wire that
5 passes between two or more states. A "foreign" wire means a
6 wire that travels internationally. Examples of wires include
7 telephone calls and messages communications over the internet,
8 commercials on television, and financial wires between bank
9 accounts. A wire communication need not itself be fraudulent.
10 Indeed, it may be completely innocent, as long as it was made
11 in furtherance of the fraudulent scheme. To be in furtherance
12 of the scheme, the wire communication must further or assist in
13 some way in carrying out the scheme to defraud. A wire
14 communication can also include a communication made after a
15 victim's funds were obtained if the communication was designed
16 to lull the victim into a false sense of security to postpone
17 his or her complaint to the authorities, or to keep the money
18 obtained from the scheme. It is not necessary for the
19 defendant to have been directly or personally involved in a
20 wire communication, as long as the wire was reasonably
21 foreseeable in the execution of the alleged scheme to defraud
22 in which the defendant is accused of participating. In this
23 regard, it is sufficient to establish this element of the crime
24 if the evidence justifies a finding that the defendant caused
25 the wires to be used by others. The wire communication

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1 requirement can be satisfied even if the wire communication was
2 done by the person being defrauded or some other innocent
3 party. When one does an act with knowledge that the use of the
4 wires will follow in the ordinary course of business or where
5 such use of the wires reasonably can be foreseen, even though
6 not actually intended, then he causes the wires to be used.
7 Thus, there is no requirement that the defendant specifically
8 authorize others to make a communication by wire.

9 Finally, if you find that a wire communication was
10 reasonably foreseeable and that the interstate or foreign wire
11 communication charged in the indictment took place, then this
12 element is satisfied even if it was not foreseeable that the
13 wire communication would cross state lines.

14 Count Three: Bank Fraud-Elements

15 Count Three charges the defendant with bank fraud. To
16 sustain its burden of proof with respect to the offense charged
17 in Count Three, the Government must prove beyond a doubt the
18 following three elements: First, a scheme to obtain money or
19 property that was under the custody or control of a bank by
20 means of materially false or fraudulent pretenses,
21 representations, or promises; Second, the defendant acted
22 knowingly, willfully, and with a specific intent to obtain
23 money or property that was under the control of a bank; and;
24 Third, at the time of the scheme, the bank that was the target
25 of the scheme was insured by the Federal Deposit Insurance

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1 Corporation. The Government must prove each element beyond a
2 reasonable doubt.

3 Count Three: Bank Fraud—First Element

4 The first element of bank fraud is that that there was
5 a scheme to obtain money or property that was under the custody
6 or control of a bank by means of materially false or fraudulent
7 representations. A “scheme” is simply a plan, device, or
8 course of conduct to accomplish an objective. A representation
9 is false if it was untrue when it was made and was known to be
10 untrue by the person making the representation. Deceitful
11 statements and half-truths or the concealment of material facts
12 also constitute false representations. A fact is material if it
13 is a fact that a reasonably prudent person would consider to be
14 important. The Government does not have to prove that the bank
15 actually relied on the false or fraudulent representation. It
16 is sufficient if the misrepresentation is one that is capable
17 of influencing a decision maker’s decision. Similarly, it does
18 not matter whether the bank might have discovered the fraud had
19 it probed further. If you find that a scheme existed, it is
20 irrelevant whether the victim of the fraud was careless or
21 negligent or whether the victim actually suffered any monetary
22 loss. As noted above, to convict on the bank fraud charge, the
23 Government must prove beyond a reasonable doubt that the false
24 or fraudulent statements or representations were material, and
25 that the defendant acted with fraudulent intent. You have seen

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1 evidence of a promissory note between Dwight Howard and the
2 Darden Sports Group. Language in a contract, such as a
3 promissory note may be relevant in considering whether false or
4 fraudulent statements or representations outside the contract
5 were material and whether the defendant acted with fraudulent
6 intent. But I instruct you that language in a contract, such as
7 a promissory note, does not render false or fraudulent
8 statements or representations made outside the contract
9 immaterial as a matter of law, and a defendant cannot use
10 contractual limitations to avoid criminal liability for
11 otherwise material misrepresentations made with intent to
12 defraud.

13 Count Three: Bank Fraud—Second Element

14 The second element the Government must prove beyond a
15 reasonable doubt is that the defendant executed the scheme
16 knowingly and willfully and with the intent to defraud the bank
17 or to obtain money or funds owned or under the custody or
18 control of the bank. I have already instructed you on the
19 meanings of knowingly, willfully, and intent to defraud, and
20 those instructions apply here as well. My prior instructions
21 concerning good faith apply here as well. It is not necessary
22 for the Government to prove that the defendant was motivated
23 solely by improper considerations. The Government will have
24 satisfied its burden of proof on this element if you find that
25 the defendant had an intent to obtain money or property that

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1 was under the control of a bank, even if the defendant also had
2 other proper or neutral intents for his actions.

3 Count Three: Bank Fraud—Third Element

4 The third element that the Government must prove
5 beyond a reasonable doubt is that at the

6 time of the scheme, the bank that was the target of
7 the scheme was federally insured. I instruct you as a matter of
8 law that banks insured by the Federal Deposit Insurance
9 Corporation, or “FDIC” are federally insured. It is not
10 necessary for the Government to prove that the defendant knew
11 the identity of the particular financial institution or that
12 the defendant knew that the deposits of the financial
13 institution were federally insured.

14 Count Five: Money Laundering—Elements

15 Count Five charges the defendant with committing money
16 laundering by engaging in financial transactions that involved
17 the proceeds of the wire and bank fraud offenses, in order to
18 conceal or disguise the nature, location, source, ownership, or
19 control of proceeds of the wire fraud and bank fraud. I will
20 refer to this as “concealment” money laundering. To sustain
21 its burden of proof with respect to the concealment money
22 laundering offense charged in Count Five, the Government must
23 prove beyond a doubt the following four elements:

24 First, the defendant conducted or attempted to conduct
25 a “financial transaction” second, the financial transaction at

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1 issue involved the proceeds of specified unlawful activity,
2 which here is alleged to be wire fraud and bank fraud; Third,
3 the defendant knew that the funds in the agreed-upon
4 transaction would involve the proceeds of some form of unlawful
5 activity; and Fourth, the defendant knew that the agreed-upon
6 transaction was designed in whole or in part to conceal or
7 disguise the nature, location, source, ownership, or control of
8 the proceeds of the unlawful activity. The Government must
9 prove each element beyond a reasonable doubt.

10 Count Five: Money Laundering—First Element

11 The first element of concealment money laundering is
12 that the defendant conducted a financial transaction. The term
13 “conducted” includes the action of initiating, concluding, or
14 participating in initiating or concluding a transaction. A
15 “financial transaction” is (1) a transaction that affects
16 interstate or foreign commerce by moving funds by wire or other
17 means or by use of one or more “monetary instruments”; or (2) a
18 transaction involving the use of a financial institution that
19 is engaged in, or the activities of which affect, interstate or
20 foreign commerce. A “monetary instrument” is anything that
21 represents money, such as coins or currency personal checks,
22 cashier’s checks, bank checks, or money orders. A “financial
23 institution” includes a bank that is insured by the Federal
24 Deposit Insurance Corporation, or “FDIC,” a commercial bank, a
25 foreign bank, or an issuer, redeemer, or cashier of checks or

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1 money orders. The term "interstate or foreign commerce" means
2 commerce between states, territories, or possessions of the
3 United States, or between the United States and a foreign
4 country. The Government must prove that the agreed-upon
5 transaction would have affected interstate or foreign commerce
6 in some way, however minimal. The term "funds" includes any
7 currency, money, or other medium of exchange that can be used
8 to pay for goods and services, including digital or
9 cryptocurrency. There are several ways a transaction can
10 affect interstate or foreign commerce. First, any transaction
11 by or through a financial institution insured by the FDIC
12 affects interstate commerce. Therefore, if any financial
13 institution that was or would have been involved in the
14 agreed-upon transaction was insured by the FDIC, that aspect of
15 this element will have been met.

16 Second, if the source of the funds in the agreed-upon
17 transaction would affect interstate or foreign commerce, that
18 is also sufficient to satisfy this aspect of this element.
19 Finally, if the agreed-upon transaction itself would involve an
20 interstate or international transfer of funds, that would also
21 be sufficient. In addition, it is not necessary for the
22 Government to show that the defendant actually intended or
23 anticipated an effect on interstate or foreign commerce by his
24 actions or that commerce was actually affected. All that is
25 necessary is that the natural and probable consequences of the

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1 acts the defendant agreed to take would affect interstate or
2 foreign commerce.

3 Count Five: Money Laundering—Second and Third Elements

4 The second and third elements of concealment money
5 laundering are (2) the defendant knew that the agreed-upon
6 transaction would involve funds that were the proceeds of some
7 form of unlawful activity, and (3) the agreed-upon transaction
8 would involve funds that were, in fact proceeds of “specified
9 unlawful activity.” The defendant need not specifically know
10 that the property involved in the transactions in which he
11 participated represented the proceeds of wire fraud, bank
12 fraud, or any other specific offense; the Government has to
13 prove only that the defendant knew that the monies being
14 transferred represented the proceeds of some illegal activity.

15 The Government must, however, prove that the
16 agreed-upon transaction would involve funds that were, in fact,
17 the proceeds of “specified unlawful activity.” In this case,
18 the Government charges that the funds at issue in the
19 agreed-upon transaction were derived from the wire fraud and
20 bank fraud charged in Counts Two and Three. I instruct you
21 that, as a matter of law, wire fraud and bank fraud meet the
22 definition of “specified unlawful activity.” I have already
23 instructed you on the elements of wire fraud and bank fraud,
24 and those instructions apply here as well.

25 Count Five: Money Laundering—Fourth Element

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1 The fourth element of concealment money laundering is
2 that the defendant knew that the agreed-upon transaction was
3 designed, in whole or in part, to conceal or disguise the
4 nature location, source, ownership, or control of the proceeds
5 of specified unlawful activity, namely, the wire fraud and bank
6 fraud charged in the Indictment. If the defendant knew that
7 the agreed-upon transaction was designed to conceal or disguise
8 the true origin of the property in question, then this element
9 is satisfied. On the other hand, if the Government has not
10 proven beyond a reasonable doubt that the defendant knew that
11 the agreed upon transaction was designed to conceal or disguise
12 the true origin of the property, then this element will not
13 have been proven.

14 Willful Causation.

15 If you unanimously find that the Government has proven
16 the defendant guilty of Count Two, Three, and Five under the
17 Government's first theory of liability—in other words, if you
18 unanimously find that the Government has proven that the
19 defendant committed the substantive crimes charged in the
20 Indictment—then you do not need to consider the Government's
21 second or third theories of liability on those counts. If, on
22 the other hand, you do not so find as to Counts Two, Three, and
23 Five, then you must consider the Government's second theory of
24 liability on those counts—that is, that the defendant is guilty
25 of the relevant count or counts because he allegedly possessed

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1 the requisite criminal intent and willfully caused someone else
2 to engage in actions necessary to commit the crimes. I now will
3 take a moment to discuss what it means for a defendant to be
4 guilty as a principal through "willful causation" in the
5 context of this case.

6 Whoever willfully causes an act to be done which, if
7 directly performed by that person would be an offense against
8 the United States, is punishable as a principal. What does the
9 term "willfully caused" mean? It does not mean that the
10 defendant needs to have physically committed the crime or
11 supervised or participated in the actual criminal conduct
12 charged in the Indictment. Rather, anyone who causes the doing
13 of an act which if done by him directly would render him guilty
14 of an offense against the United States is guilty as a
15 principal. For example, one who intentionally causes another
16 person to make a material false statement in connection with
17 depriving a victim of money or property is guilty as a
18 principal if the Government proves that the person who causes
19 the making of that false statement acted knowingly, willfully,
20 and with the specific intent to defraud the victim in question,
21 and satisfies the other elements of the substantive wire fraud
22 and bank fraud counts that I have described to you. This is so
23 even if the individual who was caused to make that false
24 statement had no criminal intent.

25 Similarly, one who intentionally causes another person

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1 to conduct a financial transaction involving the proceeds of
2 specified unlawful activity, is guilty as a principal if the
3 Government proves that the person who caused the other person
4 to conduct a financial transaction acted knowingly and
5 willfully and satisfies the other elements of the substantive
6 money laundering count I described to you.

7 Aiding and Abetting

8 If you unanimously find that the Government has proven
9 the defendant guilty beyond a reasonable doubt of Counts Two,
10 Three, and Five under either the Government's first theory of
11 liability or second theory of liability, then you do not need
12 to consider the Government's third theory of liability. But if
13 you do not convict the defendant of Count Two, Count Three, or
14 Count Five under either of the Government's first and second
15 theories of liability, then you must consider whether the
16 Government has proved him guilty of the relevant count or
17 counts based on the Government's third theory of liability,
18 which is called "aiding and abetting."

19 I will explain this third theory in greater detail
20 now. It is unlawful for a person to aid, abet counsel, command,
21 induce, or procure another to commit an offense. A person who
22 does so is just as guilty of the offense as someone who
23 actually commits it. Accordingly, for any substantive count in
24 the Indictment, you may find the defendant guilty on that count
25 if you find that the Government has proved beyond a reasonable

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1 doubt that another person actually committed the crime and that
2 the defendant aided, abetted, counseled, commanded, induced, or
3 procured the commission of that crime. In order to convict the
4 defendant as an aider and abettor, the Government must prove
5 beyond a reasonable doubt two elements.

6 First, it must prove that a person other than the
7 defendant committed the crime charged. Obviously, no one can
8 be convicted of aiding or abetting the criminal acts of another
9 person if no crime was committed by the other person.

10 Accordingly, if the Government has not proven beyond a
11 reasonable doubt that a person other than the defendant
12 committed the substantive crimes charged in the Indictment,
13 then you need not consider the second element under this
14 theory. But if you do find that a crime was committed by
15 someone other than the defendant, then you must consider
16 whether the defendant aided or abetted the commission of that
17 crime. Second, in order to convict on an aiding and abetting
18 theory, the Government must prove that the defendant willfully
19 and knowingly associated himself in some way with the crime,
20 and that he willfully and knowingly engaged in some affirmative
21 conduct or some overt act for the specific purpose of bringing
22 about that crime. Participation in a crime is willful if done
23 voluntarily and intentionally, and with the specific intent to
24 do something which the law forbids. The mere presence of the
25 defendant in a place where a crime is being committed, or the

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1 mere association by the defendant with another, even coupled
2 with knowledge that a crime is being committed, is not enough
3 to make the defendant an aider and abettor. A person may know,
4 or be friendly with, a criminal, without being a criminal
5 himself. Similarly, a defendant's acquiescence in the criminal
6 conduct of others, even with guilty knowledge, is not enough to
7 establish aiding and abetting.

8 An aider and abettor must know that the crime is being
9 committed and act in a way which is intended to bring about the
10 success of the criminal venture. Depending on your view of
11 the evidence, there may be a subtle distinction with respect to
12 whether a defendant is guilty, if at all, as a principal on a
13 willful causation theory or as an aider and abettor. The
14 question is what is the difference between a defendant
15 willfully causing someone else to take actions necessary for
16 the commission of a crime as opposed to aiding and abetting
17 someone else to commit a crime. If this question comes up in
18 your deliberations, you should think of it in terms of the
19 difference between causing someone to do something versus
20 facilitating or helping someone to do it. If you are persuaded
21 beyond a reasonable doubt that the defendant willfully caused
22 someone else to take actions necessary for the commission of
23 either of the substantive crimes charged in the Indictment, as

24 I have described willful causation, you should convict
25 him as a principal on that count. If, on the other hand, you

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1 are persuaded beyond a reasonable doubt that the defendant,
2 with the knowledge and intent that I described, sought by his
3 actions to facilitate or assist that other person in committing
4 the crime, then he is guilty as an aider and abettor. One
5 important difference between willfully causing, and aiding and
6 abetting another person to commit a crime—as I instructed you
7 earlier—is that with respect to willful causation the
8 Government need not prove that the defendant acted through a
9 guilty person. With respect to aiding and abetting, however,
10 the Government must prove beyond a reasonable doubt that
11 someone else committed the crime charged with the requisite
12 criminal intent. If you find beyond a reasonable doubt that the
13 Government has proven that another person actually committed
14 one or more of the substantive crimes charged in the Indictment
15 and that the defendant aided or abetted that person in the
16 commission of that offense, you should find the defendant
17 guilty of that substantive crime on an aiding and abetting
18 theory. If, however, you do not so find, you may not find the
19 defendant guilty of that substantive crime on an aiding and
20 abetting theory.

21 Counts One and Four: Conspiracy—Elements

22 Earlier in these instructions, I explained to you that
23 a conspiracy to commit a crime is a separate and different
24 offense from the substantive crime which may have been the
25 object of the conspiracy. Now that I have discussed the

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1 substantive counts charged in the Indictment, I will discuss
2 the elements of the conspiracy counts. Count One charges that,
3 from at least in or about 2019 through at least in or about
4 2021 the defendant conspired and agreed with other people to
5 commit wire fraud and bank fraud. Count Four charges that,
6 from at least in or about 2019 through at least in or about
7 2021 the defendant conspired and agreed with others to commit
8 money laundering. In order to sustain its burden of proof with
9 respect to the conspiracies charged in Counts One and Four, the
10 Government must prove beyond a reasonable doubt each of the
11 following elements as to each count: First, it must prove the
12 existence of the conspiracy charged in the count of the
13 Indictment second, it must prove that the defendant knowingly
14 and willfully became a member of, and joined in, the
15 conspiracy.

16 Counts One and Four: Conspiracy—First Element

17 A conspiracy is an agreement or an understanding of
18 two or more people to accomplish by concerted action a criminal
19 or unlawful purpose. In this instance, there are two alleged
20 criminal or unlawful purposes of the conspiracy charged in
21 Count One: to commit wire fraud and to commit bank fraud. There
22 is one alleged criminal or unlawful purpose of the conspiracy
23 charged in Count Four: to commit money laundering.

24 To establish a conspiracy, the Government is not
25 required to show that two or more persons sat around a table

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1 and entered into a solemn compact stating that they have formed
2 a conspiracy to violate the law and setting forth details of
3 the plans and the means by which the unlawful project is to be
4 carried out, or the part to be played by each conspirator. It
5 is sufficient if two or more persons come to a common
6 understanding to violate the law. Since conspiracy, by its very
7 nature is characterized by secrecy, it is rare that a
8 conspiracy can be proven by direct evidence of that explicit
9 agreement. You may infer the existence of a conspiracy from the
10 circumstances of this case and the conduct of the parties
11 involved.

12 The saying "actions speak louder than words" may be
13 applicable here. Usually, the only evidence available with
14 respect to the existence of a conspiracy is that of
15 disconnected acts on the part of the alleged individual
16 co-conspirators. When taken together and considered as a whole
17 however, such acts may show a conspiracy or agreement as
18 conclusively as would direct proof. In determining whether the
19 conspiracy charged in Counts One and Four actually existed, you
20 may consider all the evidence of the acts, conduct, and
21 statements of the alleged co-conspirators and the reasonable
22 inferences to be drawn therefrom. As I instructed you earlier,
23 since the essence of the crime of conspiracy is an agreement or
24 understanding to commit a crime, it does not matter if the
25 crime, the commission of which was an objective of the

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1 conspiracy, ever was committed. A conspiracy to commit a crime
2 is an entirely separate and different offense from the actual
3 commission of the illegal act that is the object of the
4 conspiracy. The success or failure of a conspiracy is not
5 material to the question of guilt or innocence of an alleged
6 conspirator. The conspiracy charged in Count One allegedly had
7 two objects—that is, the conspiracy had two illegal purposes
8 that the co-conspirators allegedly hoped to accomplish: to
9 commit wire fraud and to commit bank fraud. I explained the
10 elements of both wire fraud and bank fraud to you when I
11 instructed you on the substantive wire fraud charged in Count
12 Two of the Indictment and the substantive bank fraud charged in
13 Count Three of the Indictment. You should apply those
14 instructions when you consider whether the Government has
15 proved beyond a reasonable doubt that the conspiracy charged in
16 Count One existed. However, because Count One charges a
17 conspiracy, the Government does not have to prove that anyone
18 committed the substantive crime of wire fraud or bank fraud. It
19 need prove beyond a reasonable doubt only that there was an
20 agreement or understanding to commit at least one of the two
21 illegal purposes: either wire fraud or bank fraud.

22 In addition, it is not necessary for the Government to
23 prove that the defendant conspired to commit both objects of
24 the conspiracy. You must, however, be unanimous as to which
25 object or objects of the conspiracy, if any, you find was

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1 proven. The conspiracy charged in Count Four has one object:
2 to commit concealment money laundering. I explained the
3 elements of concealment money laundering when I instructed you
4 on the substantive money laundering charged in Count Five of
5 the Indictment. Similarly, you should apply those instructions
6 when you consider whether the Government has proved beyond a
7 reasonable doubt that the conspiracy charged in Count Four
8 existed. However, because Count Four charges a conspiracy, the
9 Government does not have to prove that anyone committed the
10 substantive crime of money laundering. It need prove beyond a
11 reasonable doubt only that there was an agreement or
12 understanding to commit concealment money laundering. The
13 Indictment charges that the conspiracies charged in Count One
14 and Count Four lasted from at least in or about 2019 through at
15 least in or about 2021. It is not necessary for the Government
16 to prove that the conspiracies lasted throughout the entire
17 period alleged, but only that they existed for some period
18 within that time frame.

19 In sum, in order to find that the conspiracies charged
20 in Count One and Count Four existed the Government must prove
21 beyond a reasonable doubt that there was a mutual understanding
22 either spoken or unspoken, between two or more people to commit
23 wire or bank fraud for Count One, and money laundering for
24 Count Four.

25 Counts One and Four: Conspiracy—Second Element

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1 If you conclude that the Government has proven beyond
2 a reasonable doubt that the conspiracy charged in Count One or
3 Count Four existed, you next must determine whether the
4 defendant willfully joined and participated in the conspiracy
5 you are considering with knowledge of its unlawful purpose, and
6 with an intent to aid in the accomplishment of its unlawful
7 objective—that is, the commission of wire fraud or bank fraud
8 or both wire and bank fraud for Count One and the commission of
9 money laundering for Count Four. The Government must prove
10 beyond a reasonable doubt that the defendant unlawfully
11 willfully, knowingly, and with specific intent to defraud
12 entered into the conspiracy. I have already instructed you when
13 discussing the substantive offenses on the meanings of
14 knowingly, willfully and intent to defraud, and those
15 instructions apply here as well. The defendant's participation
16 in the conspiracy must be established by evidence of his own
17 acts or statements, as well as those of the other alleged
18 co-conspirators, and the reasonable inferences that may be
19 drawn from them.

20 Now, science has not yet devised a manner of looking
21 into a person's mind and knowing what the person is thinking.
22 To make that determination, you may look to the evidence of
23 certain acts alleged to have taken place by or with the
24 defendant or in his presence. As I instructed you earlier with
25 respect to determining a defendant's knowledge and intent, you

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1 may consider circumstantial evidence based upon the defendant's
2 outward manifestations, his words, his conduct, his acts, and
3 all of the surrounding circumstances disclosed by the evidence
4 and the rational or logical inferences that may be drawn
5 therefrom. To become a member of the conspiracy, the defendant
6 need not have known the identities of each and every other
7 member, nor need he have known of all of their activities. In
8 fact, a defendant may know only one other member of the
9 conspiracy and still be a co-conspirator. Moreover, the
10 defendant need not have been fully informed as to all of the
11 details, or the scope, of the conspiracy in order to justify an
12 inference of knowledge on his part. Proof of a financial
13 interest in the outcome or other motive is not essential, but
14 if you find that the defendant had such an interest or other
15 motive, that is a factor you may consider in determining
16 whether the defendant was a member of the conspiracy. The
17 presence or absence of motive is, however, a circumstance which
18 you may consider as bearing on the intent of the defendant.
19 The duration and extent of a defendant's participation has no
20 bearing on the issue of a defendant's guilt. Each member of a
21 conspiracy may perform separate and distinct acts and may
22 perform them at different times. Some conspirators play major
23 roles, while others play only minor parts in the conspiracy. An
24 equal role is not what the law requires. In fact, even a single
25 act may be sufficient to draw a defendant within the ambit of

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1 the conspiracy. Moreover, the defendant need not have joined
2 the conspiracy at the outset. He may have joined at any time
3 and, if he joined still will be held responsible for the acts
4 done before or after he joined.

5 I want to caution you, however, that the mere
6 association by one person with another does not make that
7 person a member of the conspiracy even when coupled with
8 knowledge that a conspiracy is taking place. Similarly, mere
9 presence at the scene of a crime, even coupled with knowledge
10 that a crime is taking place, is not sufficient to support a
11 conviction. A person may know, or be friendly with, a criminal,
12 without being a criminal himself. Mere similarity of conduct or
13 the fact that they may have assembled together and discussed
14 common aims and interests does not necessarily establish
15 membership in the conspiracy. I further instruct you that mere
16 knowledge of or acquiescence without participation in an
17 unlawful plan is also not sufficient. The fact that the acts of
18 a defendant, without knowledge merely happen to further the
19 purposes or objectives of the conspiracy, does not make the
20 defendant a member. What is necessary is that the defendant
21 must have participated with knowledge of the unlawful purpose
22 of the conspiracy, in this case, to commit wire and bank fraud
23 for Count One; and to commit money laundering for Count Four.
24 My prior instructions concerning good faith apply here as well.
25 If you find that the defendant acted in good faith, he cannot

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1 be convicted on Counts One or Four.

2 In sum, the Government must prove, beyond a reasonable
3 doubt, that the defendant, with an understanding of the
4 unlawful nature of the conspiracy, intentionally engaged,
5 advised, or assisted the conspiracy in order knowingly and
6 willfully to promote its unlawful goal. The defendant thereby
7 becomes a conspirator. A conspiracy, once formed, is presumed
8 to continue until either its objectives are accomplished or
9 there is some affirmative act of termination by its members.
10 So, too, once a person is found to be a member of a conspiracy,
11 that person is presumed to continue being a member in the
12 venture until the venture is terminated, unless it is shown by
13 some affirmative proof that the person withdrew and
14 disassociated himself from it.

15 Coconspirator Statements

16 Certain evidence was admitted during trial concerning
17 acts and statements of others because such acts were committed
18 and such statements were made by a person who, the Government
19 claims, was also a co-conspirator of the defendant. The reason
20 for allowing this evidence to be received against the defendant
21 has to do with the nature of the crime of conspiracy. A
22 conspiracy is often referred to as a partnership in crime.
23 Thus, as in other types of partnerships when people enter into
24 a conspiracy to accomplish an unlawful end, each and every
25 member becomes an agent of the other conspirators in carrying

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1 out the conspiracy. In determining the factual issues before
2 you, you may consider against the defendant any acts or
3 statements made by any of the people you find, under the
4 standards I have already described, to have been
5 coconspirators, even though such acts or statements were not
6 made in their presence, or were made without their knowledge.

Venue

8 In addition to all of the elements that I have
9 described for you, in order to convict the defendant on any
10 count of the Indictment, you must also decide whether any act
11 in furtherance of that crime occurred within the Southern
12 District of New York. This requirement is called "venue."

13 I instruct you that the Southern District of New York
14 includes Manhattan, the Bronx, and Westchester, Rockland,
15 Putnam, Dutchess, Orange, and Sullivan counties. Venue is
16 proven if any act in furtherance of the crime you are
17 considering occurred in any of those counties. The act need not
18 have been taken by the defendant, so long as the act was part
19 of the crime that you find he committed. As to the venue
20 requirement alone, the Government's burden is to show that
21 venue is proper by a preponderance of the evidence. That is,
22 the Government must show simply that it is more likely than not
23 that venue is proper here.

CONCLUDING INSTRUCTIONS

Right to See Exhibits and Hear Testimony:

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1 Communication with the Court.

2 Ladies and gentlemen of the jury, that concludes the
3 substantive portion of my instructions to you. You are about to
4 go into the jury room and begin your deliberations. I will send
5 most of the exhibits into the jury room with you. However, if
6 during your deliberations you want to see any of the exhibits
7 that were not sent back to the jury room, you may request that
8 you be brought into the courtroom to see or hear those
9 exhibits. If you want any of the testimony read, you may also
10 request that. Please remember that it is not always easy to
11 locate what you might want, so be as specific as you possibly
12 can in requesting exhibits or portions of the testimony. If you
13 want any further explanation of the law as I have explained it
14 to you, you may also request that.

15 Your requests for exhibits or testimony—in fact any
16 communications with the Court should be made to me in writing,
17 signed by your foreperson, and given to one of the court
18 security officers. In any event, do not tell me or anyone else
19 how the jury stands on any issue until after a unanimous
20 verdict is reached as to each count.

21 Notes

22 Some of you have taken notes periodically throughout
23 this trial. I want to emphasize to you, as you are about to
24 begin your deliberations, that notes are simply an aid to
25 memory. Notes that any of you may have made may not be given

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1 any greater weight or influence than the recollections or
2 impressions of other jurors, whether from notes or memory, with
3 respect to the evidence presented or what conclusions, if any,
4 should be drawn from such evidence. All jurors' recollections
5 are equal. If you cannot agree on what you remember the
6 testimony was, you can ask to have the transcript read back.

7 Duty to Deliberate: Unanimous Verdict

8 Shortly, you will retire to decide the case. The
9 Government, to prevail, must prove the elements by the required
10 degree of proof, as already explained in these instructions. If
11 it succeeds your verdict should be guilty; if it fails, it
12 should be not guilty. To report a verdict, it must be unanimous
13 as to each element you are considering. I instruct you that
14 you are not to discuss the case unless all jurors are present.
15 Four or five or ten jurors together are only a gathering of
16 individuals.

17 Only when all jurors are present do you constitute a
18 jury, and only then may you deliberate. Therefore, if you take
19 a break for any reason you must stop your deliberations until
20 all twelve jurors are present to deliberate. Your function is
21 to weigh the evidence in the case and determine whether or not
22 the defendant is guilty, solely upon the basis of such
23 evidence. Each juror is entitled to his or her opinion; each
24 should, however, exchange views with his or her fellow jurors.
25 That is the very purpose of jury deliberation—to discuss and

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1 consider the evidence; to listen to the arguments of fellow
2 jurors; to present your individual views; to consult with one
3 another; and to reach an agreement based solely and wholly on
4 the evidence. But you are not to surrender a view of the case
5 that you conscientiously believe, merely because you are
6 outnumbered or because other jurors appear firmly committed to
7 their views.

8 (Continued on next page)

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1 THE COURT: You should vote with the others only if
2 you are convinced on the evidence, the facts, and the law that
3 it is the correct way to decide the case.

4 Each of you must decide the case for yourself after
5 consideration with your fellow jurors of the evidence in the
6 case. Your final vote must reflect your conscientious
7 conviction as to how the issue should be decided. Your
8 verdict, whether guilty or not guilty, must be unanimous.

9 If you are divided, do not report how the vote stands.
10 Simply state that you are divided. If you have reached a
11 verdict, do not report what it is until you are asked in open
12 court. Simply inform me that you have reached a verdict.

13 Instruction No. 51, verdict form.

14 I have prepared a verdict form for you to use in
15 recording your decision. Please use that form to report your
16 verdict.

17 Instruction No. 52, duty of foreperson.

18 Finally, I referred a moment ago to a foreperson. You
19 should by your own vote select one of you to sit as your
20 foreperson. The foreperson does not have any more power or
21 authority than any other juror, and his or her vote or opinion
22 does not count for any more than any other juror's vote or
23 opinion. The foreperson is merely your spokesperson to the
24 Court. He or she will send out any notes, and when the jury
25 has reached a verdict, he or she will notify the court security

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1 officer that the jury has reached a verdict, and you will come
2 into open court and give the verdict. When sending out a note,
3 any note should be signed using the foreperson's juror number.

4 Instruction No. 53, verdict form and return of
5 verdict.

6 After you have reached a verdict, your foreperson will
7 fill in the form that has been given to you. Well, the next
8 instruction, each of you will sign and date it, ladies and
9 gentlemen, it's only necessary that the foreperson sign and
10 date the verdict form, and then you will advise the court
11 security officer outside your door that you are ready to return
12 to the courtroom.

13 I will stress that each you must be in agreement with
14 the verdict which is announced in Court. Once your verdict is
15 announced by your foreperson in open court and officially
16 recorded, it cannot ordinarily be revoked.

17 In conclusion, ladies and gentlemen, I'm sure that if
18 you listen to the views of your fellow jurors and if you apply
19 your common sense, you will reach a fair verdict here.

20 Concluding remarks.

21 Members of the jury, that concludes my instructions to
22 you. I will ask that you remain seated while I confer with the
23 attorneys to see if there are any additional instructions that
24 they would like to have me give to you or anything I may not
25 have covered in my previous statements.

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1 Now, before you retire into the jury room, I must
2 inform you that the law provides for a jury of 12 people in
3 this case. Therefore, jurors in seats 13, 14, and 15 are
4 alternates. You are not yet excused as jurors in this case.
5 You will not deliberate with the 12 jurors, and you may leave
6 the courthouse.

7 However, in the event that one of the non-alternate
8 jurors can no longer deliberate, you will be called to continue
9 your service in numerical order. You have been very attentive
10 and very patient. I'm sorry that you will in all likelihood
11 miss the experience of deliberating with the jury, but the law
12 provides for a jury of 12 people in this case.

13 Before the rest of the jury retires to the jury room,
14 if you have any clothing or objects there, you are asked to
15 pick them up and withdraw before any deliberations start. I
16 ask that you hold off a moment on that. You have not been
17 formally excused. So my instruction about not discussing the
18 case – even with your fellow alternate jurors – still applies.
19 In other words, please do not discuss the case with one another
20 or anyone else while the non-alternate jurors are deliberating.
21 My staff will contact you when your jury service has concluded.

22 Now, if I could see counsel at sidebar.

23 (At sidebar)

24 THE COURT: Let me ask are there any corrections or
25 anything else that I should add to the jury instructions?

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1 MR. MEAD: Not from the government.

2 THE COURT: From the defense?

3 MR. DONALDSON: No.

4 THE COURT: All right. Thank you.

5 (In open court; jury present)

6 THE COURT: Members of the jury, you may now retire.

7 The court security officer will be sworn before you retire. I
8 ask that the three alternate jurors return to the jury room and
9 retrieve your belongings and return to the jury box.

10 Ms. Disla, if you could swear the court security
11 officer.

12 (Officer sworn)

13 THE COURT: Okay. Thank you.

14 So I would ask, ladies and gentlemen, you can now
15 retire to the jury room. The first order of business -- it is
16 obviously 5:54 now. It's up to you whether you want to begin
17 your deliberations now or return tomorrow morning at 10:00 for
18 your deliberations. The alternates can gather your belongings.
19 The jury is going to remain. And you are excused, but remember
20 do not discuss the case because you could be called upon if one
21 of the 12 jurors is unable to continue deliberations. You may
22 now retire to the jury room.

23 (Jury not present)

24 THE COURT: What I intend to do is give them a few
25 moments - I think some of the jurors needed to use the

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1 facilities -- and then have the court security officer ask
2 whether they intend to deliberate this evening or go home and
3 start deliberating tomorrow morning. And then once we hear
4 that, I'll bring them out.

5 I'll bring the 12 out and say I understand that you
6 wish to deliberate tomorrow morning and then give them the
7 final instruction about not discussing the case, no research,
8 and things like that. Even though they do now have the case,
9 they must await until when they arrive in the morning, till all
10 12 are there, all 12 are ready to participate in deliberations,
11 and then they can deliberate.

12 All right. So why don't we give them a few -- is
13 there anything else that you believe I should -- if they decide
14 to deliberate or even if they don't decide to deliberate, that
15 I should take up with them?

16 MR. MEAD: Just logistically we have the clean laptop
17 with exhibits. Should we hold onto that?

18 THE COURT: Let's hold onto it and wait and see.
19 Because if they decide to go home, the government should retain
20 that. I take it the defense has reviewed the exhibits on the
21 laptop?

22 MR. DONALDSON: Yes.

23 THE COURT: Okay. All right. And there are no
24 objections the contents of the laptop?

25 MR. DONALDSON: No.

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1 THE COURT: And am I correct that the laptop is
2 internet access disabled?

3 MR. DONALDSON: Yes. He's saying yes.

4 THE COURT: All right. Okay. So let's wait a moment.

5 Ms. Disla, could you ask the court security officer to
6 inquire whether the jury intends to deliberate tonight or
7 whether they wish to retire for the evening, and also if the
8 three alternates are still in there, they are obviously
9 excused. And if they need some additional time because there
10 are people using the facilities, just let me know.

11 If you guys need to use the restroom, why don't you go
12 ahead and do that now. But please at least one member of your
13 team try and return as quickly as you can.

14 (Recess)

15 THE COURT: So they're going to come back tomorrow.
16 You want folks to be here, that's fine. Otherwise, I'm going
17 to dismiss them. I'm going to have them come back in. You
18 want to get your client? Yeah.

19 (In open court; jury present)

20 THE COURT: You can be seated.

21 So ladies and gentlemen, I understand you want to
22 retire for the evening, which is fine. So I'd ask you to come
23 back tomorrow with the exception of the alternates, tomorrow at
24 10:00 to begin your deliberations.

25 At 10:00, or as soon as everyone is assembled, we will

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1 send back the exhibits which will be on a laptop for you to be
2 able to access during your deliberations. So the alternate
3 jurors do not have to come in tomorrow, but you're sort of on
4 standby.

5 So this instruction still applies to everyone, do not
6 discuss the case, no research or anything of the sort until
7 you're advised -- for the alternates, until you're advised by
8 probably Ms. Disla that a verdict has been reached.

9 Now, when you come in in the morning, as I said during
10 my instructions, all 12 of you have to be there before you
11 begin your deliberations. So if someone is still getting
12 situated or eating something, I mean, obviously you can eat and
13 deliberate, but if you're not ready to go, all 12 have to be
14 ready to go, all right?

15 And I won't bring you out here in the morning. You
16 can begin your deliberations when all 12 of you are back there.
17 If you haven't yet selected a foreperson, I'd ask that you do
18 that. And when you're here, we'll get the laptop back to you
19 with the exhibits. All right.

20 The folks who are going to be deliberating, you can
21 leave your notes and jury charge and verdict sheets in the jury
22 room. Okay. Thank you very much. I might not see you first
23 thing at 10:00, but please return at 10:00, and I will be here
24 if there are any issues, okay? Thank you very much. Have a
25 good evening. Safe travels home.

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1 (In open court; jury not present)

2 THE COURT: Does Ms. Disla have one or more of the
3 cell phone numbers for the counsel for each of the parties? I
4 guess what I would ask is that the parties be here at 10:00 and
5 for a period thereafter just to make sure there isn't a quick
6 note from the jurors.

7 Obviously I'd ask for the government to be here with
8 the laptop at 10:00, and I probably will wait until I hear
9 everyone is here before we send the laptop back just to have
10 the jury avoid the temptation to start deliberating when all 12
11 aren't there, and they're less likely to do that if they don't
12 have the exhibits.

13 And if you haven't given Ms. Disla your contact
14 information, you can do that tomorrow morning, but it's just so
15 that we can get in touch with you once the jury starts
16 deliberating. And folks are free to roam about, just so we can
17 call you back if there's a note. All right.

18 Let me ask is there anything that we need to deal with
19 right now before we adjourn for the evening?

20 MR. MEAD: Not from the government, your Honor.

21 MR. DONALDSON: No, your Honor. Thank you very much.

22 THE COURT: Okay. So I will see everybody, and I will
23 be here at 10:00, and we can wait for 15 minutes or so or after
24 the jury starts deliberating before anyone leaves, I guess,
25 okay? And obviously, Mr. Darden should be here and at least

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1 one attorney from the defense and one counsel from the
2 government. And Mr. Darden, that's so if there is a note or
3 something comes up so you're aware of it and you can speak with
4 your attorney or attorneys about that, okay?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: We'll stand adjourned. Thank you very
7 much. We'll see everybody tomorrow at 10:00.

8 (Adjourned to October 4, 2024, at 10:00 a.m.)
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